APPENDIX
Volume I

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1869

PETER H. BEER, PHILIP C. CIACCIO, JOSEPH V. DIROSA, CLARENCE O. DUPUY, JR., JOHN D. LAMBERT, JR., AND JAMES A. MOREAU, Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans, *Appellants*

v.

UNITED STATES OF AMERICA
and
WILLIAM B. SAXBE, Attorney General of the United States, Individually and in His Official Capacity,
and
JOHNNY JACKSON, JR., ET AL., *Appellees*

Appeal from the United States District Court for the District of Columbia

DOCKETED JUNE 13, 1974
PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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[NOTE: The Opinion of the United States District Court for the District of Columbia is included as Appendix A; the Judgment of that Court as Appendix B; and the Notice of Appeal to this Court as Appendix C in the Jurisdictional Statement filed herein.]

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APPENDIX

Volume I

Docket Entries

United States District Court for the District of Columbia

1973

July 25—Complaint, appearance Exhibits A thru H filed

July 25—Summons, Copies (2) and Copies (2) of Complaint issued D.A. & A.G. ser. 7-30

July 25—Petition for designation of a three-judge court.

July 25—Motion to advance case for hearing: P & A's.

July 26—Request for the designation of a Three Judge Panel. (N) Waddy, J.

July 30—Designation of the Hon. Spottswood W. Robinson, III, U.S.C.A. and the Hon. Howard F. Corcoran, U.S.D.C. to serve with the Hon. Joseph C. Waddy, U.S.D.C. as members of a Three-Judge Panel to hear this case. (N) McGowan, J., Acting Chief Judge.

Aug. 1—Application of defts. for order permitting service of subpoenas pursuant to 42 USC 1973 1(d); c/m 8-1-73.

Aug. 1—Order Granting deft's #1 permission to issue Subpoenas pursuant to the provisions of 42, U.S.C. 1973 (d). (N) Waddy, J.

Aug. 1—Order Granting motion of pltfs. to advance case for hearing on merits set for 10:00 A.M., 8-9-73; directing parties to submit statements of legal position and cases upon which they rely not later than noon, Wed., 8-8-73 to the Court. (N) Waddy, J.

Aug. 6—Exhibits C and H to the complaint with memorandum.

Aug. 8—Pre-Trial Memorandum for the United States.

Aug. 8—Pre-Trial Memorandum by pltfs; c/m 8-8-73.

Aug. 8—Motion of Johny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush to intervene as defts.; exhibit A; P&A; attachment; c/m 8-8-73; app. of James M. Nabrit, III (10 Columbus Circle, New York, N. Y.) Deposit $5.00 by Nabrit.

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Aug. 9—Appearance of Charles E. Cotton for deft. intervenors.

Aug. 9—Appearance of Charles E. Williams, III, for deft. intervenors.

Aug. 9—Appearance of Stanley A. Halpin, Jr. for deft. intervenors.

Aug. 9—Trial by Three Judge Panel begun; Motion of defts. to intervene argued and granted; respited until 8-10-73 @ 10:00 a.m. (Rep. E. Fedoration) S. Robinson, J., U.S.C.A., Corcoran, J. Waddy, J. U.S.D.C.

Aug. 10—Trial resumed; respited to October 17, 1973 @ 10:00 a.m. (Rep. Vernell Marshall) S. Robinson, J. U.S.C.A., Corcoran, J. Waddy, J., U.S.D.C.
(Injunctive order to be presented 8/13/73)

Aug. 13—Motion of pltfs. for extension of time to file proposed order; c/s 8/13/73.

Aug. 13—Order extending time to and including 8/14/73 @ 3:00 p.m. to submit proposed order. (N) S. W. Robinson, J. U.S.C.A., Corcoran, J., Waddy, J.

Aug. 13—Answer of Johnny Jackson, Jr., et al, intervenors to the complaint.

Aug. 14—Memorandum to the Honorable Spottswood Robinson, III, U.S.C.A., the Honorable Howard F. Corcoran, U.S.D.C., and the Honorable Joseph C. Waddy, U.S.D.C., from James R. Stoner, dated 8/14/73. (fiat) Robinson, J.—U.S.C.A.

Aug. 14—Order enjoining the Office of City Councilman of the City of New Orleans from conducting any elections pending final declaration of the rights of all parties

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in this action by this court. (N) Robinson, J.—U.S.C.A., Corcoran, J.—U.S.D.C. Waddy, J.—U.S.D.C.

Aug. 31—Transcript of Proceedings, August 9, 1973; pages 1 thru 171; Rep-E.T. Fedoration; Court's Copy.

Sept. 21—Application of deft. #1 to shorten time for responding to request for admissions; c/m 9/21/73.

Sept. 21—Requests of defts. for admissions; c/s 9/21/73.

Sept. 26—Answer of deft. U.S.A. to the complaint; c/m 9-24-73; appearance of M. Karl Shurtliff, Dept. of Justice.

Sept. 26—Calendared CAL/N.

Oct. 2—Opposition by pltfs to defts' application for order shortening time for responding to request for admissions; c/m 10-1-73.

Oct. 3—Order directing pltfs' request for admissions be served & filed with the Clerk of Court not later than 12:00 P.M., 10-15-73, without prejudice to motion of pltfs' for an extension or time within which to respond or the motion by any party for a continuance of trial, until 10-16-73. (N) Robinson, J., (U.S.C.A.,) Corcoran, J. Waddy, J.

Oct. 15—Deposition of Oretha Haley taken on Oct. 4, 1973.

Oct. 15—Deposition of Nils R. Douglas taken on Oct. 4, 1973.

Oct. 15—Deposition of Clarence O. Dupuy taken on Oct. 5, 1973.

Oct. 15—Deposition of Joseph V. DiRosa taken on Oct. 5, 1973.

Oct. 15—Deposition of Cecil W. Carter taken on Oct. 4, 1973 with attachment.

Oct. 15—Deposition of John D. Lambert, Jr. taken on Oct. 3, 1973.

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Oct. 15—Deposition of Philip C. Ciacci, taken on Oct. 3, 1973.

Oct. 15—Response of pltfs to deft's request for admissions; c/s 10-15-73.

Oct. 16—Deposition of Johnny Jackson, Jr. taken on Oct. 2, 1973.

Oct. 17—Trial Resumed; respited until 10-18-73, 10:00 A.M.; (Rep-V.Marshall) Robinson, J., (U.S.C.A.), Corcoran, J., Waddy, J., (U.S.D.C.)

Oct. 18—Trial Resumed; respited until further notice; (Rep-E.Ossen, A.M. & P.M., Al Koffman, A.M. & Eugene Fedoration, P.M.) Robinson, J., (U.S.C.A.), Corcoran, J., Waddy, J., (U.S.D.C.)

Oct. 24—Transcript of proceedings, August 10, 1973, Vol 11, Pages 172-399 (a) (g); Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Transcript of proceedings, October 17, 1973, Vol III, pages 400-474/499 500-562/600; Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Transcript of proceedings, October 18, 1973, Vol IV, pages 600 (a)-645/670, 671-708/715, 716-762/766, 767-775; Reporter: Vernell A. Marshall (Court Copy).

Oct. 24—Letter to Judge Waddy from Vernell A. Marshall, Court Reporter in re fees for transcripts. approved Waddy, J.

Oct. 29—Objection by pltfs to admission of defts' exhibit No. 31; c/m 10-26-73.

Nov. 20—Motion of non-incumbent candidates for the New Orleans City Council for leave to file as amici curiae a petition to expedite case memorandum; exhibit; c/m 11-20-73, appearance of Arthur F. Mathews and John H. Korns (1666 K St., N.W. 20006).

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Nov. 23—Brief by pltfs; appendix A; c/m 11-23-73.

Nov. 28—Reply by pltfs to motion of non-incumbent candidates for leave to file petition as amicus curiae; c/m 11-27-73.

Dec. 4—Order granting pltff's. motion to leave to file on behalf of Seven-Non-Incumbent Candidates for New Orleans City Council as amici curiae and all parties are hereby instructed to respond to the petition within ten (10) days of the filing of this order. (N) Waddy, J.

Dec. 11—Motion of pltfs' for entry of default pursuant to rule 55(a), FRCP; P&A; c/m 12-11-73.

Dec. 12—Trial Brief by Intervenors; c/m 12-7-73.

Dec. 12—Deposition of Suleiman Azeez taken on Oct. 24, 1973 for the deft.

Dec. 13—Post-Trial Brief of defts; Appendix A&B; Proposed Findings of Fact and Conclusions of Law; c/s 12-13-73.

Dec. 14—Response of United States of petition of Amici Curiae; c/m 12-14-73.

Dec. 17—Response of pltfs' to Amici Curiae Petition to expedite case and set timetable for elections; c/m 12-14-73.

Dec. 19—Response of intervenors to petition of Amici Curiae; c/m 12-17-73.

Dec. 26—Reply brief by pltfs; c/m 12-26-73.

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Jan. 4—Opinion. (N) Robinson, J., (USCA), Corcoran, J. Waddy.

Jan. 4—Order dismissing petition of the amici curiae without prejudice to refiling in another forun. (N) Robinson J. (USDC), Corcoran, J., Waddy J.

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Jan. 17—Trial by three Judge Panel resumed & concluded; taken under advisement. Rep. V. Marshall. Robinson, USCA; Corcoran, J. & Waddy, J, USDC.

Mar. 15—Order substituting William B. Saxbe Attorney General instead of Elliot L. Richardson, (N) Robinson, J., (USCA), Corcoran, J. & Waddy, J.

Mar. 15—Opinion. Robinson, J., (USCA, Corcoran, J. & Waddy, J.

Mar. 15—Order denying plaintiffs motion for declaratory judgment; dismissing case, defts. and intervenors recover costs. (N) Robinson, J. (USCA), Corcoran, J. & Waddy, J.

Apr. 5—Notice of appeal by plaintiffs to the Supreme Court of the United States; c/m 4-5-74. Paid $5.00 by Stoner.

Oct. 24—Certified copy of Letter from Supreme Court of the United States noting probable jurisdiction.

Nov. 11—Copy of Letter from the United States Supreme Court requesting transmittal of record on appeal. (Orig. filed in CA. 338-73)

Nov. 29—Stipulation re Exhibits to be transmitted with record to the United States Supreme Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 1495-73

PETER H. BEER, 5855 Bellaire Drive, New Orleans, Louisiana

PHILIP C. CIACCIO, 7341 Springlake Drive,
New Orleans, Louisiana

JOSEPH V. DIROSA, 318 W. Lakeshore Parkway,
New Orleans, Louisiana

CLARENCE O. DUPUY, JR., 6941 Argonne Street,
New Orleans, Louisiana

JOHN D. LAMBERT, JR., 1560 Pressburg Street,
New Orleans, Louisiana

JAMES A. MOREAU, 6308 Pratt Drive,
New Orleans, Louisiana

Members of the Council of the City of New Orleans, Acting For and On Behalf of the City of New Orleans
Plaintiffs

vs.

UNITED STATES OF AMERICA and ELLIOT L. RICHARDSON, ATTORNEY GENERAL OF THE UNITED STATES, individually and in his official capacity, Washington, D. C.
Defendants

Complaint for Declaratory Judgment Under Voting Rights Act

1. This Court has jurisdiction over this action by virtue of Section 5 of the Voting Rights Act of 1965, 79 Stat. 439; 42 U.S.C. § 1973c.

2. Plaintiffs are six of the seven members of the Council of the City of New Orleans with respect to which the provisions of Section 5 of the Voting Rights Act of 1965, as amended, are in effect.

3. Plaintiffs seek to administer a change with respect to voting different from that in force prior to November 1, 1964.

4. The present Charter of the City of New Orleans, which was adopted by the people of the City of New Orleans, became effective on May 1, 1954. Pursuant to the provisions of this Charter, the Council of the City of New Orleans consists of seven members, two of whom are elected from the City-at-large and five of whom are elected from Districts consisting of geographical areas which are composed of different Wards of the City of New Orleans. Copy of the Charter of the City of New Orleans, Article III, Section 3-103, is attached hereto as Exhibit "A".

5. The boundaries of the Wards of the City of New Orleans have been in force many years, dating back to the Charter of the City of New Orleans, adopted by the Legislature of the State of Louisiana by Act 159 of 1912. These Ward boundaries are set out in the extract from Act 159 of 1912 which is attached hereto as Exhibit "B".

6. In some cases, these Ward boundaries go from the Mississippi River to the Lake Pontchartrain, while in other instances, these Ward boundaries are generally set out within the core of the City of New Orleans. (See map of the City of New Orleans, attached hereto as Exhibit "C" which delineates these boundaries. This map shows the Wards 1 to 17 by circled numerals.)

7. Pursuant to the provisions of the present Charter of the City of New Orleans (Sec. 3-103(3), Exhibit "A") the Council of the City of New Orleans is required to redistrict the five Councilmanic Districts of the City of New Orleans into equally populated districts following each decennial census of the United States.

8. In compliance with this requirement, the Council of the City of New Orleans passed Ordinance Number 4796

Mayor Council Series, a copy of which is attached hereto as Exhibit "D".

9. It was not mathematically possible to redistrict the Council by Wards of the City because the population of the various Wards differ. Therefore, the plan adopted generally provided that the districts would be composed of the Wards with Precincts from some Wards incorporated into adjacent districts in order to meet the equal population requirement. The districts as of this redistricting plan are set out in the annexed Exhibit "C" in block letters A-E.

10. This Ordinance Number 4796 Mayor Council Series was submitted on May 4, 1972 to the Attorney General of the United States because of the requirement of the Voting Rights Act of 1965, as amended.

11. On January 15, 1973, the Attorney General interposed an objection to this plan. See letter of the Attorney General attached hereto as Exhibit "E".

12. As seen from this letter, the reasons of the Attorney General for interposition do not object to this plan because of the vertical lines of the proposed districts going from the Mississippi River to the Lake Pontchartrain, which are the lines which some of the Wards and therefore some of the Districts have, but set out other reasons.

13. Subsequent thereto, the Council passed Ordinance No. 5154, Municipal Council Series, on May 3, 1973, which was an amendment to the original redistricting Ordinance. This plan was submitted to the Attorney General on May 9, 1973. A copy of that Ordinance is attached hereto as Exhibit "F".

14. On July 9, 1973, the Attorney General interposed an objection to this plan. See letter of the Attorney General attached hereto as Exhibit "G".

15. The Councilmanic Districts provided for by this second re-districting are set out on the attached Map as Exhibit "H". The wards are designated by circled numerals and the Districts are in block letters A-E.

16. The population of each of the Districts by black and white persons and by black and white registered voters is set out as follows:

FIRST PLAN POPULATION

REG. VOTERS (JUNE- 1973)

		BLACK	WHITE	BLACK
DISTRICT "A"	120,971	38,011	82,960	22.9%
DISTRICT "B"	117,378	69,440	47,938	47.6%
DISTRICT "C"	117,253	47,974	69,279	26.4%
DISTRICT "D"	118,337	51,447	66,890	37.5%
DISTRICT "E"	119,532	60,436	59,096	43.0%

SECOND PLAN POPULATION

REG. VOTERS (JUNE-1973)

		BLACK	WHITE	BLACK
DISTRICT "A"	117,901	36,665	81,236	22.8%
DISTRICT "B"	118,678	76,109	42,569	53.1%
DISTRICT "C"	119,023	42,651	76,372	23.6%
DISTRICT "D"	118,337	51,447	66,890	37.5%
DISTRICT "E"	119,532	60,436	59,096	43.0%

17. Many public hearings were had on these two plans and everyone was given an opportunity to be heard.

18. The next primary election for councilmen under Louisiana law will be on November 10, 1973, with the qualifying dates for this primary being in the latter part of August, 1973. The general election will be held in March, 1974, and the assumption of office will be in April, 1974.

19. The Council has for many months been trying to achieve a proper redistricting of the Council. Early in 1972, shortly after the final 1970 census figures were first

made available in October of 1971, the Council of the City of New Orleans passed the hereinbefore set out Ordinance 4796 M.C.S. (See Allegation No. 10) by a vote of 6-1, (Councilman Beer voting against). That Ordinance was thereafter disapproved by an Assistant Attorney General as hereinbefore set out and no further action was taken by the Council in connection therewith (See Allegation No. 11).

20. Shortly thereafter, in August, 1972, the Council passed Ordinances 4922 M.C.S. and 4923 M.C.S. The Ordinances would have essentially given the electorate the right to choose between retaining a seven-member Council, or expanding the Council to either nine or eleven members. (Even earlier, the Council had passed 4795 M.C.S. and 4851 M.C.S. to accomplish the same result but these Ordinances were subsequently held inoperative by judgment of the Civil District Court for the Parish of Orleans). The Mayor of the City of New Orleans, Hon. Moon Landrieu (hereinafter referred to as the Mayor), thereafter vetoed 4922 M.C.S. thus presenting the electorate with only two alternatives: either to keep the seven member Council or to replace it with an eleven member Council (Councilman DiRosa, Moreau, Dupuy and Beer voted to override the Mayor's veto, but the measure required a two-thirds vote by specific Charter provision and, hence, the veto stood).

21. The remaining proposals, in the form necessitated by the Mayor's veto, were submitted to the electorate and, after much campaigning in support of the proposal by various groups and organizations, the proposed expansion of the Council to eleven members failed by a very substantial margin of votes.

22. After this failure on the part of the various proponents of an expanded Council, the Council again turned to the job of reapportionment under the specific applicable mandate of the City Charter, but, almost immediately, Councilman Sapir introduced Ordinance 5026 M.C.S. which, again, provided for a charter change (again requiring a vote of the people) seeking to increase the Council to nine

members (Essentially the same proposal previously vetoed by the Mayor). Again the Council voted to submit the matter to the electorate. Again various groups and organizations campaigned for passage of the proposal. Again it failed and the Council continued to consist of seven members.

23. Thereafter the Council held numerous meetings with the director and various members of the Council Research Staff and held public hearings and meetings with a wide range of groups, individuals, and committees, in an effort to devise a workable, responsible and equitable plan.

24. Thereafter the Council deliberated Ordinance 5154 M.C.S., (See Allegation 13) which was essentially a plan that had been worked out by the Council Research Staff and its director at the suggestion of Councilman Moreau. The director and staff of the Council Research Department (all Civil Service classified personnel) had taken into consideration, on a totally impartial basis, all of the data and information obtained during the various public hearings, conferences, and meetings, hereinabove described, supplemented by their own exhaustive research. The plan which was painstakingly worked on, and finally submitted by the Council Research Staff (and, thereafter, proposed by Councilman Moreau) had many points of similarity with the plan proposed by the National Association for the Advancement of Colored People. (Districts "A" and "B" were *identical*).

25. The Council discussed and considered this plan which had then come to be identified as the "Moreau Plan" and in due course, the Council passed Ordinance 5154 M.C.S. by a vote of 6-1. (Councilman Sapir voting against).

26. Thereafter Ordinance 5154 M.C.S. was submitted, to the Office of the Attorney General of the United States for action under the provisions of Section 5 of the Voting Rights Act of 1965. Objection to the plan was interposed

by the Assistant Attorney General (See Allegation 14) without a full and fair apraisal of all relevant information.

27. Plaintiffs believe that the redistricting plan as contained in the Ordinance No. 5154 M.C.S. is a fair plan of redistricting which does not have the purpose, and will not have the effect, of denying or abridging the right to vote on account of race or color.

WHEREFORE, the premises considered, plaintiffs pray:

1. That the Court enter a Declaratory Judgment adjudging that the redistricting plan as contained in Ordinance No. 5154 M.C.S. does not violate the Voting Rights Act of 1965, as amended.

2. For such other general and equitable relief as the nature of the case may require.

Respectfully submitted,

/s/ BLAKE G. ARATA
Blake G. Arata
City Attorney
City of New Orleans

/s/ ERNEST L. SALATICH
Ernest L. Salatich
Assistant City Attorney
City of New Orleans
Room 2W23—City Hall
New Orleans, Louisiana 70112
(504) 529-4311

STONER, TREESE & RUFFNER

By: /s/ JAMES R. STONER
James R. Stoner
1000 Connecticut Avenue
Washington, D.C. 20036
(202) 293-2131

Counsel for Plaintiffs

Exhibit "A"

Section 3-101. Legislative Powers. (1) All legislative powers of the City shall be vested in the Council and exercised by it in the manner and subject to the limitations hereinafter set forth.

(2) The Council shall have the right to levy any and all classes of taxes, excises, licenses and fees necessary for the proper operation and maintenance of the municipality for the payment of debt, and for capital improvements that are not expressly prohibited by the Constitution.

Section 3-102. Number and Terms of Councilmen. The Council shall consist of seven members, of whom five shall be elected from districts and two from the City at large. The terms of councilmen shall be four years beginning on the first Monday in May next following their election except that a councilman selected to fill a vacancy shall serve only for the remainder of the unexpired term.

[1] Section 3-103. Councilmanic Districts. (1) The City shall be divided into five Councilmanic Districts. Each District shall serve as the basis for electing a district councilman. The five Districts shall be as follows:

(a) District "A" shall be composed of the Fourteenth Ward, the Fifteenth Ward, the Sixteenth Ward, and the Seventeenth Ward.

(b) District "B" shall be composed of the First Ward, the Tenth Ward, the Eleventh Ward, the Twelfth Ward, and the Thirteenth Ward.

(c) District "C" shall be composed of the Second Ward, the Third Ward, the Fourth Ward, the Fifth Ward, and the Sixth Ward.

---

[1] The changes in the composition of the five councilmanic districts, as reflected herein, were effectuated by ordinance No. 2296 M.C.S., Adopted October 19, 1961.

(d) District "D" shall be composed of the Seventh Ward, and the Eighth Ward.

(e) District "E" shall be composed of the Ninth Ward.

(2) The wards referred to in this Section shall mean the seventeen wards of the City existing at the effective date of this Charter.

(3) It shall be the mandatory duty of the Council to redistrict the City by ordinance within six months after the official publication by the United States of the population of the City as enumerated in each decennial census. Each councilmanic district shall contain as nearly as possible the population factor obtained by dividing by five the City's population as shown by the decennial census. At the expiration of the six months period, if the Council shall have failed to redistrict the City as herein required, the members of the Council shall not receive any further salaries until the Council shall have adopted such ordinance, which may not be vetoed by the Mayor, and the Director of Finance shall not issue checks for such salaries for said periods.

Section 3-104. Qualifications of Councilmen. A councilman shall be a citizen of the United States and a qualified elector of the City, and shall not hold any other public office or position, the office of Notary Public, and office in the military or naval forces excepted. Candidates for Councilmen-at-large shall have been residents of the City for two years immediately preceding their election. Candidates for district councilmen shall have been residents of the districts from which elected for at least two years immediately preceding their election. Any councilman who removes his residence from the City or from the district from which he was elected shall thereby vacate his office.

Section 3-105. Election of Councilmen. (1) At the election to be held on the first Tuesday following the first

Monday of April, 1954, and every fourth year thereafter, one councilman shall be elected from each councilmanic district and two from the City at large. Each elector may vote for one district councilman from his district and may also vote for two councilmen-at-large.

(2) A vacancy in the office of any councilman shall be filled as follows:

(a) If the unexpired term is less than one year, the remaining members of the Council shall elect a citizen with requisite qualifications to fill the vacancy for the unexpired term. Vacancies shall be filled only at a regular meeting of the Council after reasonable notice of the vacancy to all remaining members of the Council. Should the Council fail to fill any vacancy within thirty days after its occurrence, the Mayor shall appoint a citizen with requisite qualifications to fill the vacancy for the unexpired term.

(b) If the unexpired term is for one year or more, the vacancy shall be filled by special election, to be called by the Council within ten days and to be held within sixty days after the occurrence of the vacancy under the election laws of the State, at which time the electors of the City, or should the vacant office be that of a district councilman, the electors of that district, shall elect a citizen with requisite qualifications to fill the vacancy for the remainder of term; provided, that if any special or general election is to be held in the City after thirty days and within six months after occurrence of the vacancy, then the election shall be held in conjunction with such other election.

Exhibit "B"

[Act 159 of 1912 Section 1]

Rights, powers and authority

(h) The legislative, executive and judicial powers of the City of New Orleans shall extend to each and every matter of local and municipal governments. The enumeration of particular powers of this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated therein or implied thereby or appropriate to the exercise of such powers, it is intended that the City of New Orleans shall have and may exercise all powers, police or otherwise, which under the Constitution of the State of Louisiana, it will be competent for this charter specifically to enumerate. All powers of the City, whether expressed or implied, shall be exercised in the manner prescribed by this Charter, and if not prescribed therein, then in a manner provided for by ordinance or resolution of the Council, it being the intent thereof that this Charter shall never be construed as impairing or restricting the effect of the general grant of powers of local self-government, which are hereby bestowed.

(i) All property now publicly owned and standing in the name of the City of New Orleans, shall be operated by the City of New Orleans, as provided for in this Charter.

Section 2. Said city shall be divided into the following wards and municipal districts, to-wit:

[Act 159 of 1912 Section 2]

Boundaries of wards and districts

First Ward, First Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Thalia street, and thence along the said projected line to the center of Thalia street on the left bank of said river,

and thence along the center of Thalia street to the intersection of Claiborne Canal, and thence along the center of Claiborne Canal to the center of Felicity road, and thence along the center Felicity road to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river and the projected line of the center of Felicity road, and thence along the center of the Mississippi river to the point of commencement.

Second Ward, Second Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Julia street, and thence along the said projected line to the center of Julia street on the left bank of said river, and thence along the center of Julia street to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the center of Carrollton avenue, and thence along the center of Carrollton avenue to the center of Melpomene Canal, and thence along the center of Melpomene Canal to the center of Claiborne Canal, and thence along the Center of Claiborne Canal to the center of Thalia street, and thence along the center of Thalia street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line on the center of Thalia, and thence along the center of the Mississippi river to the point of commencement.

Third Ward, Third Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Canal street, and thence along, the said projected line to the center of Canal street on the left bank of said river, and thence along the center of Canal street to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the center of Rampart street, and thence along the center of Rampart street to the center of Julia street, and thence

along the center of Julia street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Julia street, and thence along the center of the Mississippi river to the point of commencement.

Fourth Ward, Fourth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Canal street, and thence along the said projected line to the center of Canal street on the left bank of the said river, and thence along the center of Canal street to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the south shore of Lake Pontchartrain, and thence on the projected line of the center of said New Basin Canal to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of Orleans Canal, and thence along the said projected line of the center of the said Orleans Canal to the south shore of Lake Pontchartrain, and thence along the center of the Orleans Canal to the center of the old Metairie road, and thence along the center of the old Metairie road to the center of St. Louis street, and thence along the center of St. Louis street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of St. Louis street, and thence along the center of the Mississippi river to the point of commencement.

Fifth Ward, Fifth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of St. Louis street, and thence along the said projected line of the center of St. Louis street on the left bank of said river, and thence along the center of St. Louis street to the center

of the old Metairie road, and thence along the center of the old Metairie road to the center of the Orleans Canal, and thence along the center of the Orleans Canal to the south shore of Lake Pontchartrain, and thence on a projected line of the center of the said Orleans Canal to a point in the middle of Lake Pontchartrain to the projected line of the center of Bayou St. John, and thence along the said projected line of the center of Bayou St. John to the south shore of Lake Pontchartrain, and thence along the center of Bayou St. John to the center of St. Philip street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of St. Philip street, and thence along the center of the Mississippi river to the point of commencement.

Sixth Ward, Sixth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of St. Philip street, and thence along said projected line of the center of St. Philip street, and on the left bank of said river, and thence along the center of Bayou St. John, and thence along the center of Bayou St. John to the center of Esplanade street, and thence along the center of Esplanade street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Esplanade street, and thence along the center of the Mississippi river to the point of commencement.

Seventh Ward, Seventh Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Esplanade street, and thence along the said projected line to the center of Esplanade street on the left bank of said river, and thence along the center of Esplanade street to the center of Bayou St. John, and thence along the center of Bayou St. John and Cut Off to the south shore of Lake

Pontchartrain, and thence on the projected line of the center of said Bayou St. John to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of Elysian Fields street, and thence along the said projected line of the center of Elysian Fields street to the south shore of Lake Pontchartrain, and thence along the center of Elysian Fields street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Elysian Fields street, and thence along the center of the Mississippi river to the point of commencement.

Eighth Ward, Eighth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Elysian Fields street, and thence along the said projected line to the center of Elysian Fields street on the left bank of the said river, and thence along the center of Elysian Fields street to the south shore of Lake Pontchartrain, and thence on the projected line of the center Elysian Fields street to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the Center of People's avenue, and thence along the said projected line of the center of People's avenue to the south shore of Lake Pontchartrain, and thence along the center of People's avenue to the center of Lafayette avenue, and thence along the center of Lafayette avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Lafayette avenue, and thence along the center of the Mississippi river to the point of commencement.

Ninth Ward, Ninth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Lafayette avenue, and thence along the said projected line

to the center of Lafayette avenue, on the left bank of said river, and thence along the center of Lafayette avenue to the center of People's avenue, and thence along the center of People's avenue to the south shore of Lake Pontchartrain, and thence on the projected line of the center of People's avenue to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the center of the Rigolets, and thence along the center of the Rigolets to the Lake Borgne, and thence along the main shore of Lake Borgne, including all islands within one marine league distance thereof, to the center of Bayou Bienvenu, and thence along the center of Bayou Bienvenu to the Fisherman's Canal, and thence along the center of the Fisherman's Canal to the line of the south side of Florida Walk, and thence along the said line of Florida Walk to the lower line of the United States Barracks, and thence along the said line of the United States Barracks to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the said United States Barracks, and thence along the middle of the Mississippi river to the point of commencement.

Tenth Ward, Tenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Felicity road, and thence along the said projected line to the center of Felicity road on the left bank of said river, and thence along the center of Felicity road to the center of Melpomene Canal, and thence along the center of Melpomene Canal to its intersection with First street, and thence along the center of First street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of First street, and thence along the center of the Mississippi river to the point of commencement.

Eleventh Ward, Eleventh Representative, bounded as follows—viz.: Commencing at a point in the middle of

the Mississippi river on the projected line of the center of First street, and thence along the said projected line to the center of First street on the left bank of said river, and thence along the center of First street to the center of the Melpomene Tail Race, and thence along the center of the Melpomene Tail Race to the center of Toledano street, and thence along the center of Toledano street, to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Toledano street, and thence along the center of the Mississippi river to the point of commencement.

Twelfth Ward, Twelfth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Toledano street, and thence along the said projected line to the center of Toledano street on the left bank of said river, and thence along the center of Toledano street to the center of Broad street, and thence along the center of Broad street to the center of Napoleon avenue, and thence along the center of Napoleon avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Napoleon avenue, and thence along the center of the Mississippi river to the point of commencement.

Thirteenth Ward, Thirteenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Napoleon avenue, and thence along the said projected line to the center of Napoleon avenue on the left bank of said river, and thence along the center of Napoleon avenue to the center of Broad street, and thence along the center of Broad street to the center of Peters avenue, and thence along the center of Peters avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center

of Peters avenue, and thence along the center of the Mississippi river to the point of commencement.

Fourteenth Ward, Fourteenth Representative District, bounded as follows—viz.: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Peters avenue and thence along the said projective line to the center of Peters avenue on the left bank of said river, and thence along the center of Peters avenue to Broad street, and thence along the center of Broad street to the center of Toledano street, and thence along the center of Toledano street to the center of Melpomene Tail Race, and thence along the center of Melpomene Tail Race, to the center of Lowerline street, and thence along the center of Lowerline street to the left bank of the Mississippi river and thence to a point in the middle of the Mississippi river on the projected line of the center of Lowerline street, and thence along the center of the Mississippi river to the point of commencement.

Sixteenth Ward, Sixteenth Representative District, bounded as follows—viz: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Lowerline street, and thence along the said projected line to the center of Lowerline street on the left bank of said river, and thence along the center of Lowerline street to the center of the Melpomene Tail Race, and thence along the center of the Melpomene Tail Race to the center of Carrollton avenue, and thence along the center of Carrollton avenue to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Carrollton avenue, and thence along the center of the Mississippi river to the point of commencement.

Seventeenth Ward, Seventeenth Representative District, bounded as follows—viz: Commencing at a point in the middle of the Mississippi river on the projected line of the center of Carrollton avenue, and thence along said projected line to the center of Carrollton avenue on the left bank of

said river, and thence along the center of Carrollton avenue to the center of the New Basin Canal, and thence along the center of the New Basin Canal to the south shore of Lake Pontchartrain, and thence on the projected line of the center of the New Basin Canal to a point in the middle of Lake Pontchartrain, and thence along the middle of Lake Pontchartrain to the projected line of the center of the Upperline Canal, and thence along the said projected line of the center of the said Upperline Canal to the south shore of Lake Pontchartrain, and thence along the center of the Upperline Canal and Upperline street to the left bank of the Mississippi river, and thence to a point in the middle of the Mississippi river on the projected line of the center of Upperline Canal, and thence along the center of the Mississippi river to the point of commencement.

Fifteenth Ward, Fifteenth Representative District, bounded as follows—viz: All that part of the Parish of Orleans situated on the right bank of the Mississippi river, included within the boundaries described in the preceding section.

The First Municipal District shall include all that part of the Parish of Orleans forming the First, Second and Third Wards, as hereinbefore described.

The Second Municipal District shall include all that part of the Parish of Orleans forming the Fourth, Fifth and Sixth Wards, as hereinbefore described.

The Third Municipal District shall include all that part of the Parish of Orleans forming the Seventh, Eighth and Ninth Wards, as herinbefore described.

The Fourth Municipal District shall include all that part of the Parish of Orleans forming the Tenth and Eleventh Wards, as hereinbefore described.

The Fifth Municipal District shall include all that part of the Parish of Orleans situated on the right bank of the Mississippi river included within the boundaries hereinbefore described.

Exhibit "D"

ORDINANCE
(As Amended)

CITY OF NEW ORLEANS

City Hall, January 15, 1972

Calendar No. 5194

No. 4796 MAYOR COUNCIL SERIES

BY: COUNCILMAN MOREAU

AN ORDINANCE to redistrict the City of New Orleans pursuant to Section 3-103 (3) of the Home Rule Charter of the City of New Orleans.

SECTION 1. THE COUNCIL OF THE CITY OF NEW ORLEANS HEREBY ORDAINS, That effective on the first Monday in April, 1974, Section 3-103 (1) of the Home Rule Charter of the City of New Orleans be amended to read as follows:

(a) District A shall be composed of: Ward 16, Ward 17; Ward 14 less precincts 1, 2, and 3; and Ward 15 less precincts 1, 2, 3, 4, 5, 6, 7, and 8.

(b) District B shall be composed of: Ward 1; Ward 10; Ward 11; Ward 12; Ward 13; Ward 14, precincts 1, 2, and 3; and Ward 15, precincts 3, 4, 7, and 8.

(c) District C shall be composed of: Ward 2; Ward 3; Ward 4; Ward 5; Ward 6; Ward 7, precincts 12, 13, 15, 16, 17, 17A, 18, 19, 27A; Ward 15, precincts 1, 2, 5, and 6.

(d) District D shall be composed of: Ward 8; Ward 7 less precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A; and Ward 9, precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A.

(e) District E shall be composed of: Ward 9 less precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25 and 25A.

SECTION 2. That precincts referred to in Section 1 shall mean those precincts existing at the date of final passage of this ordinance; however, nothing herein shall be construed as limiting the power of the City government of New Orleans to adjust precinct boundaries in accordance with L.R.S. 18:586 provided that the geographical boundaries of the Councilmanic Districts described in Section 1 are maintained.

SECTION 3. That candidates for the Offices of Councilman-at-large and Councilmen for each of the Districts, as hereinabove fixed and established, who are to be voted on in the General Municipal Election to be held on the Tuesday following the first Monday of March, 1974, shall be eligible to qualify as such with the respective political party committees charged with the duty of calling and conducting primary elections on such dates as may be fixed by said committees, and be voted on in such party primary elections, in accordance with the provisions of the election laws of the State.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
MARCH 2, 1972

JOSEPH V. DI ROSA
PRESIDENT OF THE COUNCIL

Delivered to the Mayor on March 2, 1972

Approved: March 3, 1972

MOON LANDRIEU
MAYOR

Returned by the Mayor on March 3, 1972 at 3:30 P.M.

ROGER L. SARRAT
CLERK OF COUNCIL

mlm

Exhibit "E"

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

Jan. 15, 1973

Mr. Ernest L. Salatich
Assistant City Attorney
Department of Law
Room 2W23
City of New Orleans
City Hall
New Orleans, Louisiana 70112

Dear Mr. Salatich:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 4796 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on November 15, 1972.

We have given careful consideration to the submitted changes and the supporting information as well as data compiled by the Bureau of the Census and information and comments from interested parties. Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines are drawn as they are because of any compelling governmental need and they do not reject numeric population configurations or considerations of district compactness or regularity of shape. Under these circumstances we cannot conclude, as we must under the Voting Rights Act, that this plan of reapportionment for the New Orleans Council will not have a racially discriminatory effect on voting. Con-

sequently, on behalf of the Attorney General I must interpose an objection.

We have reached this conclusion reluctantly because we fully understand the complexities facing the city in designing a reapportionment plan to satisfy the needs of the city and its citizens and, simultaneously, to comply with the mandates of the federal Constitution and laws. We are persuaded, however, that the Voting Rights Act compels this result.

Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

In this connection, I wish to bring to your attention our receipt on January 12, 1973, of your City Council Ordinance 5026 M.C.S. which calls for a referendum election on March 20, 1973, on the question of increasing the size of the City Council from seven to nine members. We will review that submission and let you know the Attorney General's determination as soon as possible. However, I also wish to point out that should the increase in the size of the council be approved at the referendum, any districting plan drawn up as a result must also meet the clearance requirements of Section 5.

Sincerely,

/s/ David L. Norman
David L. Norman
Assistant Attorney General
Civil Rights Division

Exhibit "F"

City of New Orleans

city hall, december 7, 1972

calendar no. 5475

No. 5154 Mayor Council Series

By: Councilman Moreau

An Ordinance to amend and reordain Ordinance No. 4796 M.C.S., as amended, adopted March 2, 1972, redistricting the City of New Orleans pursuant to Section 3-103 (3) of the Home Rule Charter of the City of New Orleans.

Section 1. The Council of the City of New Orleans Hereby Ordains, that Ordinance No. 4796 M.C.S., as amended, be amended and reordained, and that effective on the first Monday in April, 1974, Section 3-103 (1) of the Home Rule Charter of the City of New Orleans be amended to read as follows:

District A shall be composed of Ward 13; Ward 14; Ward 16; Ward 17; Ward 3, precincts 17, 18, 19, 20; and Ward 4, precincts 11, 12, 15, 16, 16A, 19, 20, 20A, 21, 21A, 22, and 23.

District B shall be composed of Ward 1; Ward 2; Ward 10; Ward 11; Ward 12; and Ward 3, less precincts 17, 18, 19, and 20.

District C shall be composed of Ward 5; Ward 6; Ward 15; Ward 4, less precincts 11, 12, 15, 16, 16A, 19, 20, 20A, 21, 21A, 22, and 23; and Ward 7, precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A

District D shall be composed of Ward 8; Ward 7, less precincts 12, 13, 15, 16, 17, 17A, 18, 19, and 27A; and Ward 9, precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A

District E shall be composed of Ward 9, less precincts 12, 13, 14, 15, 19, 20, 21, 23, 24, 25, and 25A.

SECTION 2. That precincts referred to in Section 1 shall mean those precincts existing at the date of final passage of this ordinance; however, nothing herein shall be construed as limiting the power of the City government of New Orleans to adjust precinct boundaries in accordance with L.R.S. 18:586 provided that the geographical boundaries of the Councilmanic Districts described in Section 1 are maintained.

SECTION 3. That candidates for the Offices of Councilman-at-Large and Councilmen for each of the Districts, as hereinabove fixed and established, who are to be voted on in the General Municipal Election to be held on the Tuesday following the first Monday of March, 1974, shall be eligible to qualify as such with the respective political party committees charged with the duty of calling and conducting primary elections on such dates as may be fixed by said committes, and be voted on such party primary elections, in accordance with the provisions of the election laws of the State.

ADOPTED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
May 3, 1973

JOSEPH V. DI ROSA
PRESIDENT OF COUNCIL

Delivered to the Mayor on May 3, 1973

*Approved: .....
Disapproved: .....
MAYOR

Returned by the Mayor May 14, at 2:15 P.M.

JOSEPH C. PETERSON,
CLERK OF COUNCIL

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*NOTE: This ordinance was returned by the Mayor on May 14, 1973, at 2:15 P.M., and the same was neither approved nor disapproved by the Mayor. Therefore, said ordinance became effective at 12:00 o'clock Noon on May 13, 1973, in accordance with Section 3-113 (2) of the City Charter.

Exhibit "G"

DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

July 9, 1973

Mr. Ernest L. Salatich
Assistant City Attorney
Department of Law
Room 2W23
City Hall
New Orleans, Louisiana 70112

Dear Mr. Salatich:

This is in reference to your submission to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965 of City Council Ordinance 5154 M.C.S. which reapportioned the councilmanic districts of the City of New Orleans. This submission was received by this Department on May 10, 1973.

We have given careful consideration to the submitted changes and the supporting information as well as data complied by the Bureau of the Census and information and comments from interested parties. In addition we have utilized the information and data which you had previously provided this office in connection with our consideration of Ordinance 4796 M.C.S., pursuant to Section 5 of the Voting Rights Act of 1965.

Our analysis shows that the boundary lines prescribed by Ordinance 5154 M.C.S. appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in Ordinance 4796 M.C.S. to which an objection was interposed on behalf of the Attorney General on January 15, 1973. Under these circumstances we cannot conclude, as we must under the Voting Rights Act of 1965, that this plan of reapportionment for the New Orleans City Council will not have a racially discriminatory effect on voting. Consequently, on behalf of the Attorney

General I must interpose an objection to the reapportionment plan outlined in Ordinance 5154 M.C.S.

While we recognize that there are significant differences between the reapportionment plans proposed in Ordinance numbers 4796 and 5154 especially in regard to the number of non-contiguous districts and the population by race of proposed District B, Ordinance 5154 M.C.S. nevertheless combines a number of black voters with a larger number of white voters in four of the five districts. Moreover, the district lines in the instant submission do not appear to have been based on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape.

Our evaluation of Ordinance numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east to west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and the south of the city resulting in districts with more white than black voters.

Although the shape of the submitted districts may have been in part based upon the shape of the seventeen wards in New Orleans, the wards do not of themselves define official boundaries bearing upon the election of or representation by city council members, and adherence to the traditional shape of the wards may not serve to justify the resulting prohibited dilution of black voting strength under Section 5.

We do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectionable here. We have determined, however, that a dilutive result similar to that found in the

submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan, and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.

If you desire any further explanation of the basis for the objection herein, or believe that such further explanation would be helpful in fashioning a redistricting plan which avoids the objectionable features of the submitted plan, please do not hesitate to contact us. Of course, Section 5 permits you to seek a declaratory judgment from the District Court for the District of Columbia that this plan neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race. Until such a judgment is rendered by that Court, however, the legal effect of the objection of the Attorney General is to render unenforceable this reapportionment plan.

Sincerely,

/s/ J. STANLEY POTTINGER
J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

IN THE UNITED STATES COURT FOR THE DISTRICT OF COLUMBIA

[Caption Omitted]

Civil Action No. 1495-73

Answer

Comes now the defendant, United States of America, by and through its attorneys, and answers as follows:

1. The United States admits the allegations of paragraph 1 of the Complaint.

2. The United States admits the allegations of paragraph 2 of the Complaint.

3. The United States admits the allegations of paragraph 3 of the Complaint.

4. The United States admits the allegations of paragraph 4 of the Complaint.

5. The United States admits the allegations of paragraph 5 of the Complaint.

6. The United States admits the allegations of paragraph 6 of the Complaint.

7. The United States admits the allegations of paragraph 7 of the Complaint.

8. The United States admits the allegations of paragraph 8 of the Complaint.

9. The United States admits the allegations of paragraph 9 of the Complaint.

10. The United States denies the allegations of paragraph 10 of the Complaint wherein it is alleged that Ordinance No. 4796 Mayor Council Series was submitted to the Attorney General of the United States on May 4, 1972. Answering further the United States admits that Ordinance No. 4796 Mayor Council Series was submitted, pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, to the Attorney General of the United States.

11. The United States admits the allegations of paragraph 11 of the Complaint.

12. The United States denies the allegations of paragraph 12 of the Complaint.

13. The United States admits the allegations of the first and third sentences of paragraph 13 of the Complaint insofar as such allegations are intended to refer to Ordinance No. 5154 Mayor Council Series rather than to alleged Ordinance No. 5154 Municipal Council Series. The United States denies the allegations of the second sentence of paragraph 13 of the Complaint wherein it is alleged that Ordi-

nance No. 5154 was submitted to the Attorney General on May 9, 1973. The United States admits that Ordinance No. 5154 was submitted, pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, to the Attorney General of the United States.

14. The United States admits the allegations of paragraph 14 of the Complaint.

15. The United States admits the allegations of paragraph 15 of the Complaint.

16. The United States denies the allegations of paragraph 16 of the Complaint concerning the population, by race, of each of the districts for the first plan. The United States admits the allegations of paragraph 16 of the Complaint concerning the population, by race, of each of the districts for the second plan. The United States is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 16 of the Complaint concerning the percentage of black registered voters as of June, 1973.

17. The United States is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 17 of the Complaint.

18. The United States admits the allegations of paragraph 18 of the Complaint.

19. The United States denies the allegations of the first sentence of paragraph 19 of the Complaint. The United States admits that Ordinance No. 4796 M.C.S. was passed, by a vote of 6-1, by the Council of the City of New Orleans. The United States admits that after Ordinance No. 4796 M.C.S. was submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, as amended, an objection was interposed to the implementation of that ordinance by an Assistant Attorney General on behalf of the Attorney General. The United States further admits that to the best of its

knowledge and belief no further action was taken by the City Council in connection with Ordinance No. 4796 M.C.S.

20. The United States admits that in August 1972 the City Council passed Ordinances Nos. 4922 M.C.S. and 4923 M.C.S.. The United States admits that Ordinance Nos. 4922 and 4923 were proposals to amend the city charter via referenda elections to increase the size of the City Council from 7 to 9 members or from 7 to 11 members. The United States further admits that the Mayor of the City of New Orleans thereafter vetoed Ordinance No. 4922 and that the veto was not overridden by the City Council.

21. The United States denies the allegations of paragraph 21 of the Complaint wherein it is alleged that "proposals" were submitted to the electorate. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraps 21 of the Complaint wherein it is alleged that ". . . after much campaigning in support of the proposal by various groups and organizations, the proposed expansion of the council to eleven members failed by a very substantial margin of voters." Answering further the United States admits that a majority of the ballots cast in the election on Ordinance No. 4923 M.C.S. did not favor the adoption of the City Charter amendment set out therein.

22. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of that portion of the first sentence of paragraph 22 of the Complaint down to, and including, the word "immediately" set out in line 4 of paragraph 22. The United States admits the allegations of that portion of the first sentence of paragraph 22 of the Complaint from, and including, the words "Councilman Sapir" set out in line 4 of paragraph 22. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the third sentence of paragraph 22 of the Complaint. The United States admits the allegations of the

second and fourth sentences of paragraph 22 of the Complaint.

23. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the Complaint.

24. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first and second sentences of paragraph 24 of the Complaint. The United States admits that Districts A and B of Ordinance 5154 M.C.S. were identical to proposals for two districts in a redistricting plan proposed to the City Council by the National Association for the Advancement of Colored People.

25. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of that portion of the first sentence of paragraph 25 of the Complaint to, and including, the word "course" set out in line 3 of paragraph 25. The United States admits the remaining allegations of paragraph 25 of the Complaint.

26. The United States admits the allegations of the first sentence of paragraph 26 of the Complaint. The United States denies the allegations of the second sentence of paragraph 26 of the Complaint. Answering further the United States admits that pursuant to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, an objection was interposed to the implementation of Ordinance No. 5154 M.C.S. by an Assistant Attorney General on behalf of the Attorney General.

27. The United States is without information sufficient to form a belief as to the truth of the allegations of paragraph 27 of the Complaint wherein it is alleged that "[P]laintiffs believe that . . .". Answering further the United States denies that Ordinance No. 5154 M.C.S. is a fair plan of redistricting which does not have the purpose,

and will not have the effect, of denying or abridging the right to vote on account of race or color.

WHEREFORE, the United States prays that the Court deny the relief requested by plaintiffs.

J. STANLEY POTTINGER
Assistant Attorney General

/s/ M. KARL SHURTLIFF
GERALD W. JONES
M. KARL SHURTLIFF
NATHANIEL FRIENDS
Attorneys
Department of Justice
Washington, D.C. 20530
739-3849

[Certificate of Service Omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Motion To Intervene as Defendants

Johnny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush, on behalf of themselves and all others similarly situated, move for leave to intervene as defendants in order to assert the defenses set forth in their proposed answer, a copy of which is attached hereto, on the following grounds:

1. This is an action brought by six of the seven members of the Council of the City of New Orleans pursuant to the Voting Rights Act of 1965, 79 Stat. 439; 42 U.S.C. § 1973c praying for a declaratory judgment that Ordinance No.

5154 of the City of New Orleans that redistricted the city as required by Article III, Section 3-103 of the Charter of the City of New Orleans does not ". . . have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color . . . ." Petitioners are all black, adult citizens of the United States and of the State of Louisiana, and are registered voters of the Parish of Orleans, City of New Orleans, Louisiana. Petitioner Johnny Jackson, Jr. resides at 2814 Clouet Street and is registered to vote in Councilmanic District E. Petitioner Theodore Marchand resides at 2427 Caffin Avenue and is registered to vote in Councilmanic District A. Petitioner Larry Jones resides at 3919 Harmony Street and is registered to vote in Councilmanic District D. Petitioner James Singleton resides at 1931 Fourth Street and is registered to vote in Councilmanic District B. Petitioner Melvin Bush resides at 1430 Hermosa Street and is registered to vote in Councilmanic District A. Petitioners move to intervene on behalf of themselves and all black registered voters of the City of New Orleans whose relative voting power will be diluted unless city council elections are conducted under a non-discriminatory plan of redistricting.

2. In addition to being black registered votes of the City of New Orleans, petitioners are the plaintiffs in *Jackson, et al* v. *The Council of the City of New Orleans, et al.*, Civil Action No. 73-1862, filed in the United States District Court, Eastern District of Louisiana, on July 12, 1973,[1] two days after the objections to Ordinance No. 5154 were made, which includes in its prayer for relief a request that a master be appointed to redistrict the city in a non-discriminatory manner prior to the election scheduled for the fall of this year. The requested master was appointed on August 4 ,1973.

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[1] See Exhibit A.

3. Petitioners have an interest in the subject of this action both as black registered voters for whom the protections of Section 5 of the voting rights act were promulgated and as plaintiffs in *Jackson* v. *Council of the City of New Orleans* which, because of the immediacy of the councilmanic elections, they may as a practical matter be impaired or impeded from protecting as a result of the disposition of this action.

4. Plaintiffs have made allegations relating to the history of Ordinance No. 5154 and the general history of councilmanic districting practices in the City of New Orleans. Petitioners have a knowledge and understanding of said history superior to any of the named defendants, therefore their interests cannot be adequately represented unless they are permitted to intervene as defendants.

Respectfully submitted

Stanley A. Halpin, Jr.
Kidd, Katz & Halpin
906 Carondelet Building
226 Carondelet Street
New Orleans, Louisiana 70130
(504) 581-2688

Charles E. Cotton
Cotton, Jones & Fazande

Jack Greenberg
James M. Nabrit, III
Eric Schnapper
Charles E. Williams, III

Wiley Branton

Attorneys for Plaintiffs

/s/ James M. Nabrit, III
James M. Nabrit, III

Dated: August 8, 1973.

Exhibit "A"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 73-1862

Class Action

Section D

Johnny Jackson, Jr., Theodore Marchand, Larry Jones, James Singleton, Melvin Bush, on behalf of themselves and others similarly situated, *Plaintiffs*,

versus

The Council of the City of New Orleans; Joseph V. DiRosa, James A. Moreau, Philip C. Ciaccio, John D. Lambert, Jr., Clarence O. Dupuy, Jr., Eddie L. Sapir, and Peter H. Beer, members of the Council of the City of New Orleans; The City of New Orleans; and Maurice Landrieu, in his official capacity as Mayor of the City of New Orleans, *Defendants*.

Complaint

I. Jurisdiction

1. This is a class action brought pursuant to 42 U.S.C. § 1983 to redress violations of rights secured to plaintiffs by the Fourteenth and Fifteenth Amendments to the United States Constitution. Plaintiffs seek a declaratory judgment under 28 U.S.C. § 2201 that the councilmanic districting arrangement provided by Section 3-103(1) of the Charter of the City of New Orleans violates their rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and injunctive relief prohibiting further implementation of said section and requiring that elections for the Council of the City of New Orleans be conducted under a constitutionally sufficient non-discriminatory redistricting plan to be devised by the Court. Plaintiffs further seek an injunction prohibiting members of the Council of the City of New Orleans from drawing their salaries due to their failure to effect a good faith redistricting in compliance with the United

States Constitution and the New Orleans City Charter. Jurisdiction is conferred on this Court by 28 U.S.C. Section 1343(3) and (4).

II. Parties

2. Plaintiffs are all black, adult citizens of the United States and of the State of Louisiana, and are registered voters of the Parish of Orleans, City of New Orleans, Louisiana. Plaintiff Johnny Jackson, Jr. resides at 2814 Clouet Street and is registered to vote in Councilmanic District E. Plaintiff Theodore Marchand resides at 2427 Chaffin Avenue and is registered to vote in Councilmanic District A. Plaintiff Larry Jones resides at 3919 Harmony Street and is registered to vote in Councilmanic District D. Plaintiff James Singleton resides at 1931 Fourth Street and is registered to vote in Councilmanic District B. Plaintiff Melvin Bush resides at 1430 Hermosa Street and is registered to vote in Councilmanic District A.

3. Pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, plaintiffs sue on their own behalf and on behalf of the class of all registered voters and subclass of black registered voters of the City of New Orleans whose relative voting power will be diluted unless the forthcoming city council elections are conducted under a constitutionally sufficient non-discriminatory plan of redistricting. The members of the class and subclass are so numerous that joinder of all members is impracticable. There are questions of law or fact common to the claims of the class and subclass, the claims of the respective parties are typical of the claims of the respective class and subclass, and the representative parties will fairly and adequately protect the interests of the class and subclass.

4. Defendant the Council of the City of New Orleans (hereinafter the "city council") is the general legislative body of the city of New Orleans (hereinafter the "city charter") with power and duty of reapportioning itself. Defendants Joseph V. DiRosa, James A. Moreau, Philip C. Ciaccio, John D. Lambert, Jr., Clarence O. Dupuy, Jr.,

Eddie L. Sapir, and Peter H. Beer are the members of the city council.

5. Defendant the City of New Orleans exists pursuant to Article IV, Section 22 of the Constitution of the State of Louisiana and under a Home Rule Charter adopted by referendum election and which went into effect in May of 1954. Defendant Maurice Landrieu is the Mayor and chief executive officer of the City of New Orleans.

• • • • • • • • • •

III. Statement

6. The existing districting arrangement of the city council pursuant to Section 3-103(1) is grossly malapportioned having wide population variances between districts resulting in dilution of voting strength of persons in under-represented districts. According to the 1970 census, each councilmanic district should ideally represent 118,694 persons, but under said section the councilmanic districts according to the 1970 census have the following populations and deviations from the ideal:

District A—134,613; +13.41%
District B—108,769; — 8.36%
District C—100,811; —15.06%
District D—114,367; — 3.64%
District E—134,911; +13.66%.

7. The city council has attempted on two occasions to effect racially discriminatory plans of redistricting. On each occasion the Attorney General of the United States. Pursuant to Section 5 of the Voting Rights Act of 1965, invalidated the plan by entering an objection grounded on the fact that the plans would have the purpose and effect of denying or abridging the right to vote on account of race.

8. The first plan, city council Ordinance 4796 M.C.S. was objected to by the Attorney General on January 15, 1973, who stated correctly in his letter of objection that:

> Our analysis shows that the district boundary lines in the submitted plan are drawn in a manner which

> appears to dilute black voting strength by combining a number of black voters with a larger number of white voters in each of the five districts. Moreover, it does not appear that the district lines are drawn as they are because of any compelling governmental need and they do not reflect numeric population configurations of district compactness or regularity of shape.

9. City council Ordinance 4796 M.S.C. was not a good faith effort to redistrict in accordance with constitutional guidelines and the city charter, but was, as characterized by the March 4, 1972 New Orleans *States-Item* editorial, a "reapportionment joke".

10. In spite of the clear mandate from the Attorney General that racially discriminatory redistricting would be unacceptable under Section 5 of the Voting Rights Act of 1965, the second plan of the city council, city council Ordinance 5154 M.C.S. incorporated the same type of defects which had prompted the Attorney General to object to the first plan.

11. Accordingly on July 9, 1973 the Attorney General entered his objection to city council Ordinance 5154 M.C.S. stating correctly in his letter of objection that:

> Our analysis shows that the boundary lines prescribed by Ordinance 5154, M.C.S. appear to effect a dilution of black voting strength in the same manner as did the boundary lines prescribed in Ordinance 4796, M.C.S., to which an objection was interposed on behalf of the Attorney General on January 15, 1973.
>
> While we recognize that there are significant differences between the reapportionment plans proposed in Ordinance Numbers 4796 and 5154, especially to the noncontiguous districts and the population by race of proposed District B, Ordinance 5154, M.C.S., nevertheless combines a number of black voters with a larger number of white voters in four of the five districts.

> Moreover, the district lines in the instant submission do not appear to have been based on any compelling governmental need or to reflect numeric population configurations or considerations of district compactness or regularity of shape.
>
> Our evaluation of Ordinance Numbers 4796 and 5154 indicates that the objectionable dilution of black voting strength in both redistricting plans is primarily attributable to the vertical shape of the submitted districts. Because the predominantly black neighborhoods in the city are located generally in an east-west progression, the vertical districts in the submitted plans divided the black neighborhoods and combined them with white areas in the north and south of the city, resulting in districts with more white than black voters.
>
> Although the shape of the submitted districts have been in part based upon the shape of the 17 wards in New Orleans, the wards do not of themselves define official boundaries bearing upon the election of or representation by City Council members, and adherence to the traditional shape of the wards may not serve to justify the resulting prohibited dilution of black voting strength under Section 5.
>
> We do not mean by this analysis to imply that other reapportionment plans based upon vertical districts will necessarily divide the black neighborhoods in the city to the degree found objectionable here. We have determined, however, that a dilutive result similar to that found in the submitted plan is difficult to avoid when such districts are utilized to the extent found in the submitted plan and that the extent to which such districts were utilized is not necessary to achieve a successful reapportionment of the city's population.

12. City council Ordinance 4796 M.S.C. was not a good faith effort to redistrict in accordance with constitutional guidelines and the city charter, but was but another attempt to deprive black citizens of New Orleans of their right to an unfettered franchise and all voters of New Orleans of their right to elect the city council members under a constitutionally sufficient plan of apportionment.

13. In both ordinances, the city council has purposefully attempted to effect "slot machine" racial gerrymandering by constituting the districts in a vertical north to south, river to lake configuration, which, given the well-known racial residential patterns running east to west, would have the inevitable, predictable and fully anticipated effect of diluting the voting strength of black citizens of New Orleans.

14. The city council attempted to effect these two plans in spite of the fact that numerous black leaders testified before the city council outlining in minute detail the racially discriminatory nature of said plans and that the city council had before it a number of alternate plans.

15. Section 3-103(3) of the Charter of the City of New Orleans prescribes a "mandatory duty" upon the city council to redistrict itself within six months of the official publication of the United States decennial census and further provides that if the council fails to perform this mandatory duty, "the members of the Council shall not receive any further salaries until the Council shall have adopted such ordinance . . . and the Director of Finance shall not issue checks for such salaries for said periods." The actions and omissions of the city council and its individual members in failing to make a good faith effort to redistrict themselves in keeping with the constitutional one man, one vote mandate, the constitutional and federal statutory prohibition against racially discriminatory delineation of electoral districts, and the mandate of their own charter has resulted in the city council being without

a valid plan and without the prospect of devising a valid plan and the election process scheduled to begin in approximately one month. Unless this Court immediately appoints a special master to receive suggested redistricting plans and devise a plan which conforms to the one man, one vote mandate and the prohibition against racial discrimination and specifically avoids the racially discriminatory vertical arrangement of districts, plaintiffs and their class will be effectively denied the right to vote by virtue of being denied the right to elect members of the city council at the regularly scheduled elections under a constitutionally sufficient plan of apportionment.

IV. Violation of Law

16. The present apportionment of the city council provided by Section 3-103(1) of the city charter dilutes the relative strength of the class of voters residing in underrepresented councilmanic districts to such an extent as to violate the rights of plaintiffs and other voters similarly situated under the equal protection clause of the Fourteenth Amendment.

Second Count

17. As more fully set out above, the actions and omissions of the city council and its individual members in failing to devise in good faith a constitutionally sufficient non-discriminatory plan of apportionment have deprived and continue to deprive plaintiffs and the class and subclass they represent of their rights secured by the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Third Count

18. As more fully set out above, the actions of the city council and its individual members in failing to devise in good faith a constitutionally sufficient non-discriminatory

plan of apportionment within six months of the publication of the 1970 Census have deprived plaintiffs and their class of rights secured by the Charter of the City of New Orleans. The Court has pendent jurisdiction over this cause of action.

V. Equity

19. There is a real and actual controversy between the parties as described herein. Plaintiffs have no adequate remedy at law. Plaintiffs are suffering and stand to suffer irreparable injury as a result of the apportionment challenged herein and the failure of defendants the city council and its members to effect a constitutionally sufficient plan of redistricting, and that injury will continue and become hopelessly irreparable unless enjoined by this Court.

VI. Color of Law

20. All of the acts alleged in this complaint to have been done by defendants were done under color of law of the State of Louisiana and under color of the defendants' respective offices as officers or agents of the State.

VII. Prayer For Relief

21. Wherefore, plaintiffs respectfully pray,

a) That this Court immediately appoint a special master pursuant to Rule 53 of the Federal Rules of Civil Procedure and direct said master to receive suggested plans of apportionment and expeditiously devise a plan of redistricting for the Council of the City of New Orleans which complies with the one man, one vote mandate, avoids racial discrimination and specifically avoids those racially discriminatory features found objectionable by the Attorney General of the United States, in prior plans of the city council invalidated under Section 5 of the Voting Rights Act of 1965.

Plaintiffs suggest that the Court appoint one of the following exceptionally qualified persons to serve as special master:

Dr. Jewel L. Prestage
Professor of Political Science
Southern University, Baton Rouge, Louisiana
Visiting Professor of Political Science,
Louisiana State University in New Orleans

Mr. Peter W. Dangerfield
President, Metro Consulting and Research
4224 South Claiborne Avenue
New Orleans, Louisiana

b) That defendants the City of New Orleans and Maurice Landrieu, Mayor of the City of New Orleans, be enjoined from paying and that defendants the individual members of the Council of the City of New Orleans be enjoined from receiving any further salaries of the city council members until and unless the city council adopts a good faith constitutionally sufficient plan of apportionment.

c) That defendants be ordered to place into escrow the salaries of the members of the city council to secure payment of compensation to the special master, plaintiffs' expenses, and reasonable attorney's fees in this litigation.

d) That the Court issue a declaratory judgment that the apportionment of the city council under Section 3-103(1) is unconstitutional and violative of the constitutional rights of plaintiffs and others similarly situated, pursuant to 28 U.S.C. 2201.

e) That the Court issue preliminary and permanent injunctions restraining defendants from further implementing Section 3-103 of the city charter.

f) That the Court issue preliminary and permanent injunctions requiring defendants to implement a plan of re-

districting which is racially non-discriminatory and conforms to the equal protection clause of the Fourteenth Amendment.

g) That the Court award plaintiffs their court costs, expenses, and reasonable attorney's fees.

h) Plaintiffs further pray for such additional relief as is just and equitable.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

CHARLES WILLIAMS
ERIC SCHNAPPER
JACK GREENBERG
JAMES NABRIT III

Attorneys for Plaintiffs

by STANLEY A. HALPIN, JR.
Stanley A. Halpin, Jr.
Trial Attorney

Of Counsel:

DAVID J. DENNIS
1110 Royal Street
New Orleans, Louisiana

DATED: July 12, 1973

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Points And Authorities

Petitioners seek to intervene in the instant action to insure that their interests as described in the motion to intervene are adequately protected. It has previously been held that such an intervention is proper. *City of Petersburg, Virginia* v. *United States,* 354 F. Supp. 1021 (U.S. D.C. Dist. Col. 1972); *City of Richmond* v. *United States,* U.S. D.C. Dist. Col., Civil Action No. 1718-72.

WHEREFORE petitioners pray that their motion be granted.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

JACK GREENBERG
JAMES M. NABRIT, III
ERIC SCHNAPPER
CHARLES E. WILLIAMS, III

WILEY BRANTON

Attorneys for Plaintiffs

by /s/ JAMES M. NABRIT, III
James M. Nabrit, III

UNITED STATES DISTRICT COURT DISTRICT OF COLUMBIA

Civil Action No. 1495-73

[Caption Omitted]

Answer of Intervenors

1. Intervenors admit the allegations of paragraph "1" of the complaint.

2. Intervenors admit the allegations of paragraph "2" of the complaint.

3. Intervenors admit the allegations of paragraph "3" of the complaint.

4. Intervenors admit the allegations of paragraph "4" of the complaint.

5. Intervenors admit the allegations of paragraph "5" of the complaint.

6. Intervenors are without information sufficient to form a belief as to the truth of the allegations of paragraph "6" of the complaint.

7. Intervenors admit the allegations of paragraph "7" of the complaint.

8. Intervenors admit the allegations of paragraph "8" of the complaint.

9. Intervenors admit the allegations of paragraph "9" of the complaint, except that they are without information sufficient to form a belief as to the truth of the allegation that it was not mathematically possible to redistrict the Council by wards.

10. Intervenors admit the allegations of paragraph "10" of the complaint.

11. Intervenors admit the allegations of paragraph "11" of the complaint.

12. Intervenors deny the allegations of paragraph "12" of the complaint.

13. Intervenors admit the allegations of paragraph "13" of the complaint.

14. Intervenors admit the allegations of paragraph "14" of the complaint.

15. Intervenors admit the allegations of paragraph "15" of the complaint.

16. Intervenors are without sufficient information to form a belief as to the truth of the allegations of paragraph "16" of the complaint.

17. Intervenors admit the allegations of paragraph "17" of the complaint.

18. Intervenors admit the allegations of paragraph "18" of the complaint.

19. Intervenors deny the allegations of the first sentence of paragraph "19" of the complaint. Intervenors are without sufficient information to form a belief as to the truth of the other allegations of paragraph "19" of the complaint.

20. Intervenors admit the allegations of paragraph "20" of the complaint.

21. Intervenors admit the allegations of paragraph "21" of the complaint.

22. Intervenors admit the allegations of paragraph "22" of the complaint.

23. Intervenors deny the allegation of paragraph "23" of the complaint that an effort was made to devise a workable, responsible and equitable plan, and are without information sufficient to form a belief as to the truth of the other allegations of the complaint.

24. Intervenors deny the allegations of paragraph "24" of the complaint.

25. Intervenors admit the allegations of paragraph "25" of the complaint.

26. Intervenors deny the allegations of paragraph "26" of the complaint that decision of the Attorney General to disapprove Ordinance 5154 M.C.S. was without a full and fair appraisal of all relevant information. Intervenors admit the other allegations paragraph "26" of the complaint.

27. Intervenors deny the allegations of paragraph "27" of the complaint.

28. Each of the plans enacted by the City Council of New Orleans was enacted with the purpose and effect of preventing the election of any black members of the council and preserving in office the white incumbents by diluting the votes of black voters by placing those voters in districts where they will be outnumbered by white voters.

29. In the year and one half since the 1970 census data became available, plaintiffs have persistently failed to enact a plan acceptable under the Voting Rights Act and the United States Constitution because of their desire to assure their reelection by racial gerrymandering, to prevent the election of black councilmen, and to dilute the votes of black voters. Plaintiffs have obstinately refused to enact such a plan in the further hope that this delay would precipitate a crisis which would compel the Justice Department or the courts to approve elections in 1973 under an invalid and unconstitutional redistricting plan.

30. There is now pending in the United States District Court for the Eastern District of New Orleans an action brought by intervenors to compel the enactment of a redistricting plan to be approved by that court. *Jackson* v. *Council of City of New Orleans,* No. 73-1862. On August 4, 1973, Judge Boyle appointed a special master to draw

up such a plan. Elections can and will be held under such court approved plan in an orderly and fair manner without the necessity of any intervention by this Court.

31. In view of the proceedings in *Jackson* v. *Council of City of New Orleans,* there is no need or justification for this Court to decide precipitously and without time for detailed consideration of the complex issues raised by the instant case. To do so would be to reward plaintiffs for their delay in filing the instant action, and would encourage other jurisdictions subject to the Voting Rights Act to delay, by a serious of inadequate proposals or otherwise, commencing litigation in this Court until the eleventh hour in the hope of precipitating a hurried decision allowing them to change their election laws despite the timely and carefully considered disapproval of the Department of Justice.

Respectfully submitted,

STANLEY A. HALPIN, JR.
KIDD, KATZ & HALPIN

CHARLES E. COTTON
COTTON, JONES & FAZANDE

JACK GREENBERG
JAMES M. NABRIT, III
ERIC SCHNAPPER
CHARLES E. WILLIAMS, III

WILEY BRANTON

Attorneys for Plaintiffs

by /s/ JAMES M. NABRIT, III
James M. Nabrit, III

[Certificate of Service Omitted]

TRANSCRIPT OF PROCEEDINGS

Courtroom No. 1
U.S. Court House
Washington, D.C.
Thursday, August 9, 1973

The above-entitled matter came on for hearing in open court at 10:00 o'clock a.m.

Before: Honorable Spottswood W. Robinson, III, USCA., Honorable Howard F. Corcoran, USDC., Honorable Joseph C. Waddy, USDC.

• • • • • • • • • • •

[3] The Deputy Clerk: Civil Action 1495-73, Peter H. Beer, et al., versus the United States of America, et al. Mr. Stoner, Mr. Treese, Mr. Arata, and Mr. Salatich for the plaintiffs. Mr. Gorman, Mr. Shurtliff, and Mr. Friends for the defendants. Mr. Halpin, Mr. Williams and Mr. Cotton for the intervenors.

Judge Robinson: It would be helpful to the Court if at the outset counsel would identify themselves for the information of the Court and also for the benefit of the record.

Mr. Stoner: Thank you, Your Honor.

May it please the Court, my name is James R. Stoner. I am appearing here as counsel for the plaintiffs. With me is my partner, James R. Treese, who is also appearing for the plaintiffs. Also with us is the City Attorney of New Orleans, Mr. Blake G. Arata, and the Assistant City Attorney for the City of New Orleans, Mr. Ernest Salatich.

I would move at this time that Mr. Arata and Mr. Salatich be admitted as members of this bar for the purpose of this case.

Judge Robinson: That motion will be granted. Thank you very much, Mr. Stoner.

Representing the United States?

Mr. Shurtliff: May it please the Court, Carl Shurtliff. With me at counsel table is Walter Gorman who will be [4] joined shortly by Nathaniel Friends.

Judge Robinson: Thank you very much.

Representing the applicants for intervention?

Mr. Halpin: Stanley Halpin representing the movers for the defendant, the intervenor-defendants. With me is Mr. Charles Cotton and Mr. Charles Williams. I am a a member of the D.C. Bar but don't maintain an office address here. I would ask for purposes of this proceeding that Mr. Cotton and Mr. Williams be allowed to proceed for this case only.

Judge Robinson: That motion will be granted.

Judge Waddy: Do you have a local address, sir?

Mr. Halpin: We have one member, one counsel, as local counsel, Mr. Wiley Branton, who does appear on the papers and who would be responsible.

Judge Waddy: Mr. Branton is not here at the present time?

Mr. Halpin: Mr. Branton is not here right at this moment. If it would be necessary, I could have him come down.

Judge Waddy: His name does appear on the paper?

Mr. Halpin: Yes, sir.

Judge Robinson: Your motion, Mr. Halpin, for the admission of your colleagues will be held in abeyance until the Court has made a ruling on the question of whether intervention will be allowed. In the event the intervention is allowed, the motion respecting counsel will be granted.

[5] Mr. Halpin: Thank you.

Judge Robinson: Gentlemen, at the outset we would like to take up the question of intervention. The application for intervention was filed on yesterday. The Court received it this morning. We have noted that it was personally served on the original parties to the case on yesterday.

Is there any objection to the granting of that motion?

Mr. Stoner: Your Honor, it would be our position, we have no objection to the intervention for the purpose of

argument of the issues. We, however, do not know what position they would be taking with respect to the issues which have been raised in the Complaint, and we believe that the purposes of their intervention—we would have no objection to their intervention for the purpose of argument of the case to the Court. We believe that if they were to be allowed to intervene for all purposes, that is, the cross-examination of witnesses and the offering of evidence, it may unduly prolong the hearing on the case.

Judge Robinson: Let me inquire of Mr. Halpin. Is there a proposed complaint in the intervention?

Mr. Halpin: Yes, a proposed answer in intervention.

Judge Robinson: Is it attached? Oh, yes. Very well. Did you want to respond to the statement just made to the Court by Mr. Stoner?

Mr. Halpin: Yes, sir. We would like to intervene [6] not only for the purposes of argument but for all purposes in this matter, for these reasons: The individuals who we represent are the named plaintiffs also in the New Orleans case, Jackson vs. the Council of the City of New Orleans which has recently appointed a special master to draft the plan for the City Council in the event that this Court finds, as the Justice Department did, that the plan is racially discriminatory. Also, that has been accepted without objection in New Orleans as an adequate class action.

We feel that we represent interests of black people in New Orleans and are more familiar with the particular nuances and so on of this case, so that, one, it would be extremely useful to the Court and protective of our party's rights to be available to cross-examine and to examine on direct witnesses.

Further, we do have only one additional witness that we would call, and that would be Mr. Jackson. We do not intend to prolong the proceedings in any way, and I can give the Court my personal assurance that we will do nothing to delay the proceedings.

Further, I would point out that we will be proposing as a defense a legal theory which will require certain types

of questions to be put to the witness and certain types of evidence, which the Department of Justice may not—I am not sure exactly what their approach is, but it is not clear that [7] they will present that type of evidence from a live witness.

Judge Robinson: Now, the issue or issues that your clients would desire to address would differ in what way, if any, from the issues already raised——

Mr. Halpin: All right. Well——

Judge Robinson: —by the complaint and by the Government's answer?

Mr. Halpin: Well, the issue that we will raise, which I think has been raised to some extent and is of a nature in the proceedings, is that the plan of the City Council before the Court must be determined as not racially discriminatory either in purpose or effect. What we would argue is that the burden is also upon the City Council to prove that the two at large seats on the City Council are also not racially discriminatory in purpose or effect in order for them to carry their burden of proof. It is not entirely clear from the Justice Department's memorandum and so forth and pleadings in this case whether they are going to take that position and whether they are going to take it aggressively, and we would take that position aggressively. We feel that under United States versus Georgia, a voting change is a voting change, and since there has been a redistricting and a re-change, the question is directly before the Court as to whether or not the plaintiffs, that is, the City Council, can prove to the Court that these at large elections for the two seats on the City [8] Council are not racially discriminatory, and we would propose that point very aggressively.

Judge Robinson: Am I correct in my understanding that except for that, your clients would propose to address themselves only to matters that are within the existing issues?

Mr. Halpin: Yes, Your Honor.

Judge Robinson: Very well. Let me inquire of Mr. Shurtliff, what is the Government's position, because in going over the papers I was not clear either as to whether or not the issue with reference to the two at large councilmen as distinguished from those elected, the five from the districts, are in issue here.

Mr. Shurtliff: It is our position, Your Honor, that the issue of the two at large seats may be reached by this Court——

Judge Robinson: May?

Mr. Shurtliff: May be considered by this Court but that it is really not necessary to get to that issue. The issue, we believe, can be resolved on the question of whether or not the districting plan of the five district councilmen had the purpose or effect of discriminating on the basis of race, and that that issue can fairly easily be resolved and that it would not be necessary to get to the question of the impact of the two at large members.

Judge Robinson: If it turns out that you are incorrect [9] on that estimate, we would have to reach the question of the two councilmen at large; would we not?

Mr. Shurtliff: That's correct.

Judge Waddy: Mr. Stoner, what you are arguing is that you have no objection to the applicants for intervention to come in as amicus curiae, but you are opposing the intervention; aren't you?

Mr. Stoner: I guess, Your Honor, that would be the effect. Let me say at this point that we do not believe that the at large seats are at issue before the Court, for the reason that this is a charter of the City of New Orleans. It is at issue. It has been in effect since 1954.

Now, that charter specifically calls for five election districts and two at large seats. The history of the charter of New Orleans as set out in the complaint will show that there have been two elections held within the past year on the subject matter of changing the charter of the City of New Orleans. The first proposal was that the charter be changed so as to expand the council from a seven-man

body to an 11-man body with nine district councilmen and two at large.

That matter was submitted to the voters of New Orleans and was defeated by the electorates.

Following that, a proposal was made that the City Council be expanded from its present seven-man body to a nine-man body, consisting of seven district councilmen and two [10] at large councilmen. That matter was submitted to the electorate in an election held this year and was defeated.

So that the matter before the Court is the council as it presently exists; I mean by that the number of council districts, namely five councilmanic districts and two at large. That is the law of the City of New Orleans.

The electorate on two occasions has turned down a proposal that the City Council be otherwise constituted. We would submit that the question of the at large election of two councilmen is not at issue before this Court. The only issue before the Court is whether or not the five council districts as proposed in Plan No. 2 which is submitted to this Court for approval discriminates in violation of the Voting Rights Act of 1965.

Judge Waddy: Would it be appropriate, however, for the Court to consider the two at large seats on the council in connection with the overall plan for redistricting?

Mr. Stoner: Your Honor, I do not think it would, because I think in effect that the Court then would be considering —would in effect be rewriting the City Charter of the City of New Orleans.

Judge Waddy: If we are to determine the effect of the redistricting, don't we have to determine it in connection with the entire package that will result after the redistricting?

[11] Mr. Stoner: I think you do, Your Honor. I think the Court does. But I do submit that the City Council as constituted by the City Charter is the matter which must be considered by this Court, and that is the five councilmanic districts and the two at large. I do not think that

this Court can be asked by any party to rewrite the City Charter of the City of New Orleans.

Judge Robinson: I gather from the papers I have read and from what you have just said that there is nothing in the redistricting which is now before the Court that would affect in anywise boundaries or anything else that would concern the election of the two councilmen at large?

Mr. Stoner: That is correct, because the boundaries or the two councilmen at large are the city limits of the City of New Orleans, and the boundaries we are dealing with here are the boundaries of the five councilmanic districts.

Judge Robinson: The applicants for intervention, however, want to intervene not simply in an amicus curiae role but to intervene to achieve party status, not only for the purpose of litigating the issues with reference to the councilmen that are already before the Court, with the statement having been made by counsel for the applicants so as to justify what the applicants expect to seek in this litigation.

Do you have a position now with reference to the [12] motion to intervene in the true sense, not in the amicus sense?

Mr. Stoner: We have no objection to the intervention of these parties. We think all the facts should be before this Court. We do, however, differ with the intervenors on the question of the two at large. Now, as I understand the statement——

Judge Robinson: Perhaps I can save you a little effort. It seems to me that unless there is objection to the intervention—and if there is objection, of course, the Court would have to rule on it—we would permit the intervention and we would decide later just what the scope of the issues in this case might be. It is clear enough to me that the applicants at least want to participate in the litigation of issues that are framed for decision by the Court.

Now, with that in mind, is there any objection to the granting of the motion?

Mr. Stoner: I would submit, Your Honor, that it would be the plaintiffs' position that we would have no objection on that basis. But may I consult with counsel——

Judge Robinson: Certainly.

Mr. Stoner: —sitting at counsel table?

(Whereupon, plaintiffs' counsel confer.)

Mr. Stoner: The position is as I have just stated. We would have no objection.

Judge Robinson: Very well.

[13] Mr. Shurtliff, does the United States have a position on this?

Mr. Shurtliff: We would have no objection to the intervention with full rights.

Judge Robinson: Very well. The Court is now prepared to grant the motion to intervene subject to the limitation that I mentioned a bit earlier. Intervention will be granted. The scope of the issues, however, not only for the purpose of the intervenors but also for the purpose of other parties, is a matter which the Court at a later time will undertake to define.

Also, as the Court indicated earlier, the granting of this motion will be accompanied by a grant of the motion to permit the participation of Mr. Williams and Mr. Cotton as co-counsel for the intervenors in this case.

Now, gentlemen, is there anything else?

Judge Waddy: And leave to file the answer which is attached to the motion will be granted.

Is there anything else now in connection with the motion to intervene?

The next matter that the Court would like to take up is the question of just what sort of presentation counsel have in mind making. In going over the papers we understand that the plaintiffs and the defendants—and from the statement [14] made by Mr. Halpin, I gather to perhaps a more limited extent, the intervenors—all contemplate the introduction of evidence. It certainly would be helpful to the Court if you gentlemen would define for ou. edifica-

tion just what your expectations are in that particular regard, particularly with reference to the amount of time you think those presentations are going to take.

Perhaps it would be helpful if I stated that the Court has great concern stemming from the fact that it is its understanding that it is desiring to set a date sometime later this month by which candidates for office in the City of New Orleans are to qualify. Today, of course, is August 9th. We do not know as to whether indeed it will be possible to litigate this question and reach a decision by the date that counsel for the plaintiffs desire a decision of the Court. Quite obviously, this is going to be affected by the nature of the presentations the parties have in mind.

Mr. Stoner, could you tell us what the expectations of the plaintiffs are?

Mr. Stoner: Yes, sir. May it please the Court, counsel for the plaintiffs and the Government have been mindful of the length of time that could be involved in this kind of litigation, and we have agreed to stipulate to many of the facts which we think could be helpful in saving the Court's time. For instance, the large map which you see exhibited here [15] is a map that has been stipulated and shows the distribution of white and black population in the City of New Orleans as of 1970 census. Counsel for the Government and Plaintiffs have stipulated that this can be admitted for that purpose without formal proof.

Likewise, we will submit a map showing the distribution of white and black voters in the City of New Orleans by registration, and that will include figures, registration figures as of June 1973. That is just two months ago, and it has been updated by the research staff of the City of New Orleans. Likewise, that map will be stipulated by the parties as to geographically showing the distribution of black and white voters.

In addition to that, the Government has requested a number of stipulations as to some of the other plans that have been offered by other parties as to other matters that on behalf of the plaintiffs I would like to present to

the Court; that we will stipulate wherever we can to the evidence so as to save the Court some time.

Judge Robinson: Aside from stipulations, as you view the matter now, Mr. Stoner, what do you think the time requirements for the plaintiffs' presentation will be?

Mr. Stoner: Your Honor, I think for the most part we could offer all our evidence today.

Judge Waddy: We are not talking about arguments. We [16] are talking about presentation of evidence plus arguments.

Mr. Stoner: I would think that the case should be able to be tried today and tomorrow from both our standpoints.

Judge Waddy: How many live witnesses do you anticipate?

Mr. Stoner: We intend to call at least one member of the City Council and possibly two members of the City Council Planning Staff and possibly a third. So, as of the present time we would expect five witnesses.

Judge Robinson: Very well, Mr. Stoner.

Mr. Shurtliff, what are your expectations?

Mr. Shurtliff: May it please the Court, depending on how successful we are stipulating to some of the exhibits that we have proposed, we would anticipate calling four witnesses who would be rather short, we expect, and also extensive cross-examination of some of the—extensive in terms of an hour or so, I would expect, on two of the witnesses offered by the plaintiffs in the case.

I would agree with Mr. Stoner that in all likelihood the case could easily be tried today and tomorrow, especially if we were able to resolve a couple of minor disagreements on four of the prepared exhibits that we have prepared.

Judge Robinson: And if you do not make this resolution?

Mr. Shurtliff: I would anticipate it may take 20 minutes of the Court's time for us to put someone on to explain [17] the method by which those exhibits were prepared.

Judge Robinson: How long do you think it will take to resolve it? Less than 20 minutes?

Mr. Shurtliff: I would hope so.

Judge Robinson: Very well. Mr. Halpin?

Mr. Halpin: Your Honor, we would generally also be willing to stipulate where we can. We intend at this time to call only one witness. But since we are in a defendant's position, of course, if we see that it is necessary for rebuttal testimony, other witnesses might be appropriate. But my anticipation at this time is a single short witness.

Judge Robinson: And your estimation of the amount of time it will take for that, sir?

Mr. Halpin: I would say 20 minutes to half an hour for examination and cross-examination.

Judge Robinson: Very well. So much for the evidentiary presentations.

Gentlemen, how about other needs in connection with this case, legal argument and that sort of thing? I recognize that it may be somewhat difficult to make estimates at this time, until the evidence has been presented.

The Court, in an effort to facilitate this litigation as much as possible, did call on counsel for some preliminary statements of legal positions prior to its sitting today. After the evidence has been taken and the case has been sub- [18] mitted to the Court, the needs for presentation of written argument, perhaps also all argument, may obviously be quite different.

What are your feelings in that regard, Mr. Stoner?

Mr. Stoner: Your Honor, with that accepted position of the Court, I would think that closing argument, a half to three-quarters of an hour, possibly an hour in closing argument, depending on the extent of the evidence.

Judge Robinson: Do you expect to file any sort of legal brief in this case?

Mr. Stoner: As of this moment, we would not. But it may develop as the testimony comes in that, yes, we would.

Judge Robinson: Very well. Mr. Shurtliff,

Mr. Shurtliff: Your Honor, I would think that most of the evidence will be in the form of maps, statistics, matters of that sort, testimony of witnesses. I really don't

believe that oral argument would need be very extensive, if at all necessary.

Judge Robinson: How about written briefs?

Mr. Shurtliff: I would think, if the Court please, that a written brief might well be the best way to set out the positions of the parties.

Judge Robinson: And your estimate of time demands in that respect?

Mr. Shurtliff: I really couldn't estimate. We could [19] do it rather rapidly as we did at your request for the pretrial memorandum. Of course, it would take more effort, but hopefully it will not take much longer if the Court directs.

Judge Robinson: Mr. Halpin?

Mr. Halpin: I expect that our oral argument will be brief, and assuming that the other issues are covered by the Department, will be specifically directed to the question of the two at large districts. I anticipate at this time that I will be able on that oral argument to cover our legal arguments in that respect without the necessity of a written brief. But should we file a written brief, we can certainly file it within any time allowed for the Department to file theirs.

Judge Robinson: Very well, gentlemen. This is a very important case. Speaking simply for myself and irrespective of the present plans of counsel, I may in all probability request counsel to file written briefs. The importance of the litigation, the apparent complexities of the case, to say nothing of the unexpected which cannot be gauged at this present time, would all seem to indicate that written submissions of that character may very well be in order. I do not know whether my colleagues want to express themselves on that or not.

(Whereupon, the Court confers.)

Judge Robinson: Our present feeling, gentlemen, is that we will be sensitive to a need for briefs and also proposed findings of fact and conclusions of law from you gentlemen.

[20] I announce that at this time for whatever bearing it may have on the question of timing, that we have under consideration.

I would like to address this question to all parties. Quite obviously, with this litigation being filed on July 25th and the matter having been set for hearing today, there has been no opportunity for depositions or interrogations or any other discovery process up to the present time.

Do counsel feel that if an opportunity of that sort were available it would facilitate the presentations not only from the Court's viewpoint but also from counsel's viewpoint?

Mr. Stoner?

Mr. Stoner: Your Honor, I might represent to the Court that by stipulation of parties, depositions of the three members of the Council Research Staff were taken in New Orleans last Friday——

Judge Robinson: Is that right?

Mr. Stoner: —upon notice that the case was set down for hearing. We stipulated, and my partner, Mr. Treese and I, and Mr. Shurtliff, went to New Orleans last week and started to prepare our case, and depositions were taken. I don't believe that any further pre-trial would be necessary from your standpoint.

Judge Robinson: Are the depositions transcribed? Are they available now?

Mr. Stoner: They sir, Your Honor. Yes, they are.

[21] Judge Robinson: And the witnesses deposed, Mr. Stoner, again were whom?

Mr. Stoner: There were three members of the Council Research Staff, the Director and two of his assistants.

Judge Robinson: That is a group, as I understand, that did the planning with reference to the redistricting that is now before the Court?

Mr. Stoner: That's right. They did the statistical work and the preparation of several plans and several alternative plans. They are all three here in the courtroom, and we will offer them as witnesses. But their depositions have

been taken and the Government does know the extent of their knowledge and testimony.

Judge Waddy: Do you plan to have live witnesses to explain the various maps and diagrams that you say you have here in addition to the five that you have mentioned?

Mr. Stoner: No, I think these five would be used for that purpose.

Judge Waddy: They would be used for that purpose?

Mr. Stoner: Yes, sir, Your Honor.

Judge Robinson: Very well, Mr. Shurtliff.

Mr. Shurtliff: Depositions were taken and they are transcribed. However, they were taken for the purposes of discovery. We did not get into the question with those three witnesses whether or not they could be introduced for evidentiary [22] purposes. It is my judgment that if we could introduce those exhibits—the depositions taken of the three Research Staff members—that it would limit therefore the necessity for in-depth examination when they do appear, and it would be time-saving in that respect.

Judge Robinson: The depositions were taken at whose instance?

Mr. Shurtliff: The Government's, Your Honor. I would think if we could get some of the information in through the depositions, it would not be necessary for us to set out the methods in particular as to how the plans were arrived at. There is quite a bit of background material that sets the stage, but——

Judge Robinson: Have you discussed this aspect of the matter of this possibility with other counsel?

Mr. Shurtliff: We have not, Your Honor. One other matter. On the time element and so forth, we have proposed four exhibits which we have discussed briefly with counsel for the plaintiffs, and they have some reservations about stipulating to their use at this time. If it became necessary for us to put on supporting testimony or to add to those exhibits, it would take us some time in those respects. We believe that it would have us considerable

effort if we can arrive at a stipulation as to the those four exhibits.

Judge Robinson: Now, how soon could you let us know [23] in that regard?

Mr. Shurtliff: As to whether or not——

Judge Robinson: As to whether a stipulation can be reached.

Judge Waddy: In other words, if we took a brief recess, could counsel get together within a reasonable time here and advise the Court fully as to what they have stipulated to?

Mr. Stoner: May I be heard on this, Your Honors?

Judge Waddy: Yes.

Mr. Stoner: Counsel for the Government has requested that 22 exhibits be stipulated to. Now, we have agreed to stipulate to all of these except four. The four that we have not agreed to, we don't feel, are really competent evidence.

For example, one is a portion of an ad that appeared in one of the New Orleans' newspapers. It was an ad that was placed there by the City of New Orleans announcing the election, but it does not include the whole ad. It only includes a portion of the ad. We think the Court should have the entire ad to really assess the import.

Judge Waddy: Do you have the balance of it?

Mr. Stoner: We do not, Your Honor; we do not. Now, we objected to the admission of part of the ad. We say the whole ad should be admitted.

Then there is also a letter from one of the councilmen [24] who voted against this plan. Incidentally, the plan before the Court as set out in the complaint was a six to one vote. There is a letter by one of the councilmen which we don't think is appropriate. I understand that the councilman is here in the City of Washington, and any evidence that he should have to present, we think he should do it live.

In addressing ourselves to the question of the use of the depositions for other than discovery purposes, we

think it is unfair to the Court when the witnesses are here to use those depositions for evidentiary purposes. In other words, we have brought those witnesses here so that the Court can see them in person and assess the testimony which we will adduce. We believe it is unfair to the Court to rule on this issue without seeing the witnesses who will be giving substantially statistical facts to the Court.

Judge Robinson: I think that probably the Court may be of some assistance to counsel, if you will indulge me.

(Whereupon, the Court confers.)

Judge Robinson: Gentlemen, we are going to take a recess to enable counsel to see whether they can finalize the possibilities of stipulations and other procedures that may have a tendency to shorten this presentation. I want to impress on counsel that the only reason for suggesting that counsel do that so as to shorten this matter is not only the reason that ordinarily contributes to judicial economy but also because we [25] simply have this dreadful time problem that I mentioned before. The Court has tried to cooperate as far as it can and, of course, it will expect counsel to do the same thing.

Now, before we take this recess, I would like to ask Mr. Stoner just a couple of questions, and I am asking these only out of an abundance of precaution.

If the case were ready for submission to the Court now, I would have no idea as to whether the Court could get its decision out in time to enable the setting of a qualification date later this month or indeed anytime soon.

What will be the consequence to the people of New Orleans if delay in that regard is unavoidable? I would like you also to tell me just how this matter has been handled since the point—when was it? In 1971—when the City Council first began to work on the matter of redistricting with respect to elections other than the referendums that were had in two instances? In other words, have there been instances where the problem of elections in New Or-

leans of some kind or another have had to be handled? If so, how were they handled, Mr. Stoner?

Mr. Stoner: May it please the Court, I understand that the present law—maybe Mr. Arata or Mr. Salatich can help me—but I understand that the present law requires the setting of a time late in August of 1973 for qualification for the November election. Now——

[26] Judge Robinson: Oh, in August you simply set another time instead of setting a time which is the time for qualification in August?

Mr. Stoner: No, no. The time is set in August, in the latter part of August, 1973, for qualification. Now, this would require notice to the electorate as to the last date for qualifying for the primary election.

Judge Robinson: And the latest possible date in that regard would be what?

Mr. Stoner: If the Court will indulge me one second.

Mr. Salatich, can you answer that question?

Mr. Salatich: It would be approximately sometime in the latter days of January, Your Honor. There is a latitude in there, a few days.

Mr. Stoner. Of August.

Mr. Salatich: August.

Judge Waddy: Give us the earliest date and the latest date.

Mr. Salatich: If my memory serves me correctly, it would be about September 1st, August 26th; somewhere in that interval. August 27th to September 1st. About a three-day interval in that connection.

Mr. Halpin: If I might——

Judge Robinson: Just a moment. We will indulge you in just a bit.

[27] All right. Now, what happens if we can't make that date?

Mr. Stoner: I believe that—if the Court will indulge me.

(Whereupon, Mr. Stoner and Mr. Salatich confer.)

Mr. Stoner: I am informed, Your Honors, that the Court could set other dates for the qualification but——

Judge Robinson: Which Court?

Mr. Stoner:—the November election——

Judge Robinson: Which Court?

Mr. Stoner: Presumably this Court, Your Honor, in view of the pendency of this matter. The present status of the matter is that an election cannot be held now unless this Court approves this plan.

Judge Robinson: Has there been any elections other than the two referendums since the matter of redistricting was embarked upon by the Council?

Mr. Stoner: Yes, I believe there was a national election that was held last November and——

Judge Robinson: Was it affected by the problem that is presented by this litigation?

Mr. Stoner: It was not, Your Honor. This is redistricted to the local elections in the City of New Orleans.

Judge Robinson: In other words, unless the election concerns voting to put in office five members of the Council [28] from the five electoral districts in New Orleans, you do not have this problem; is that the answer to it?

Mr. Stoner: That's correct, that's correct. It is redistricted just to the five councilmanic districts. Well, really I guess it is the five councilmanic districts and the two at large of the City of New Orleans. So, it is merely a local issue.

Judge Waddy: Is the November date set by ordinance or statute or has that been an ad hoc date?

Mr. Stoner: No, that's been set by the statute of the State of Louisiana.

Judge Waddy: And if you could not proceed with that election in November, when would the next one be? Next November or when?

Mr. Stoner: Well, I am sure there is machinery for the establishment of——

Judge Waddy: For a special election?

Mr. Stoner: For a special election.

May we consult just one moment?

Judge Robinson: Well, why don't we afford counsel this opportunity in the recess that I mentioned before. I know that you gentlemen are as aware as we are that the need to postpone elections, sometimes even to enjoin elections, has appeared in some of the litigation with reference to Section 5 problems. The purpose of this explanation, of course, was to [29] size up the problem in this case.

Gentlemen, how much time do you think you would need to accomplish these several purposes?

Mr. Stoner: Minutes.

Judge Robinson: How long a recess do we need to take?

Mr. Halpin, I must apologize. I said a few minutes ago that the Court would recognize you in due course. Can this be held until after?

Mr. Halpin: I simply wanted to say for the Court's benefit that my knowledge on this is that the District Court in New Orleans has considered this problem also relative to moving the qualification date back. When the Louisiana legislature was redistricted by a special master appointed by the Federal Court recently, the qualifying date had been moved back in that instance, and I think there would be no problem to either this Court or that Court moving the qualification date without disturbing the election.

Judge Robinson: Gentlemen, we will take a recess. Since it isn't quite certain as to just what amount of time you gentlemen will need, suppose we take a recess until further order of the Court. When you gentlemen have exhausted the possibilities of stipulating and the possibilities of anything else that may facilitate the presentation of your respective positions in this case, would you notify the Marshal, and as promptly thereafter as may be possible the Court will then [30] reconvene.

With that the Court will stand in recess until further order.

(Whereupon, the Court then, at 10:55 o'clock a.m., stood in recess until 11:30 o'clock a.m., at which time it reconvened.)

(During the recess, the following exhibits were marked for identification: Plaintiff's Exhibits 1, 2 and 3; Defendant's Exhibits 1 through 16, 18, and 21 through 24.)

Judge Robinson: Very well. Is there anything further that you would want to report to the Court on the events occurring during recess?

Mr. Stoner: I can report to the Court that we have discussed the request for various stipulations and we will be able to deal with them. I believe we have made some headway and we have to resolve some misunderstanding between counsel, and we have made some headway that should have the effect of shortening the offer of the evidence.

Judge Robinson: And during the course of this trial there, of course, will be continuing opportunity for counsel to cooperate in this regard.

Mr. Stoner: Yes.

Judge Robinson: Thank you very much, Mr. Stoner.

Do other counsel wish to report anything to the Court [31] at this time?

Mr. Halpin?

Mr. Halpin: I would like to respond briefly to what Mr. Stoner had indicated relative to the Court's power and so forth and state our position on that.

I think it is beyond question that the Court does have power to enjoin the elections. A similar court did so in the City of Petersburg, and there is no question that that could be done. Our interest——

Judge Robinson: Well, in Petersburg and in other cases too.

Mr. Halpin: Yes, sir, in any number of cases. I can cite the Court to a number of District Court decisions in Louisiana which have done that also.

As a practical matter, what we would like to point out to the Court is that in Louisiana the incumbents, of course, are all white. Many of the black candidates will be running for the City Council perhaps for the first time with the

realistic chance of being able to win. We are very opposed to having a short period of campaigning. We think if the Court is going to consider delaying part of the election process, they should delay all of it. That is, there is no reason why the Court couldn't allow the other municipal elections to go under way at the regularly scheduled time and move back not only the qualifying period but also the elections for City Councilmen, so that [32] the class that we represent will have an equal opportunity to present their campaign to the voters as do the incumbents who are well-known by virtue of their incumbency.

Judge Robinson: Gentlemen, thank you very much. As I think is well attested to by what has happened up to the present time, the Court is expending every effort to accommodate the exigencies of time associated with the New Orleans situation. The matter was raised with counsel this morning because, quite obviously, the question is just how much maybe possible, and we felt some enlightenment might be helpful to us at this time. We will continue to do everything that we can to expedite the resolution of this litigation.

If it becomes apparent to the Court that it cannot be done by the end of this month—and the possibility of that, of course, is quite great—in all probability we will be discussing details with counsel again at a later time.

I will also say for the information of counsel and the parties that during the recess period we succeeded in clearing out today and tomorrow for the purposes of the evidentiary presentations based upon the estimate of counsel that it could be done within this space of time. It is the hope of the Court that it can be done within this space of time, because the members of the Court have dreadful problems if it becomes necessary to extend this trial beyond tomorrow.

We will proceed then with the taking of evidence, unless [33] there is some other preliminary matter.

Do counsel desire the rule on witnesses?

Mr. Stoner: We do not.

Mr. Shurtliff: We do not, Your Honor.

Judge Robinson: Mr. Halpin?

Mr. Halpin: No.

Judge Robinson: Do you desire to make opening statements? We are fairly familiar with the case and so far as the Court is concerned, they may be dispensed with unless you gentlemen want to make them.

Mr. Stoner: Your Honor, I would prefer a short opening statement.

Judge Robinson: Very well. All right, Mr. Stoner, you may proceed.

Mr. Stoner: I will assure the Court I will keep it as short as possible.

Opening Statement by Mr. Stoner.

Mr. Stoner: The case before the Court is an action brought under Section 5 of the Voting Rights Act of 1965 as it is commonly referred to. In this case the Council of the City of New Orleans, acting for and on behalf of the City of New Orleans, has brought an action to declare the second plan which it has adopted of redistricting a valid plan for the redistricting of the City of New Orleans for purposes of the election of the Council of the City of New Orleans.

[34] We have present with us in the courtroom five of the six plaintiffs, all of whom are members of the City Council, and I should like to just briefly introduce them to the Court at this time. Mr. Peter H. Beer, Mr. Philip Ciaccio, Mr. Joseph DiRosa, Mr. John Lambert, and Mr. James A. Moreau.

I might say that Mr. DiRosa and Mr. Moreau are the two councilmen who have been elected at large. The other three persons are representatives of districts in the City of New Orleans.

Under the Charter of the City of New Orleans, it is mandatory that the City Council redistrict itself every 10

years. This is a Charter provision that was adopted in 1954 and has been in existence since. It requires the City Council to redistrict itself following each decennial census of the United States Census Bureau.

Judge Robinson: The Charter itself is a creature of the citizens of New Orleans, or does the legislature or any other political subdivision of the State of Louisiana play a part in that? Somehow I though—I understood that this was a Charter framed by the citizens of New Orleans for the citizens of New Orleans. Do I have the right impression?

Mr. Arata: That's right, but it is also protected by our constitution.

Judge Robinson: Legislative approval or executive approval is not necessary to any amendments of the Charter? [35] Mr. Arata: For any amendment of the Charter we need a vote of all the people.

Judge Robinson: But you do not have to go beyond the citizenry of the City of New Orleans?

Mr. Arata: That's correct.

Judge Robinson: Very well. Thank you.

Mr. Stoner: Now, the Charter itself, to state again, makes it mandatory that the Council redistrict itself every 10 years. This is founded in purpose, namely, that as population changes occur in the City, the districts should be drawn so as to reflect the changes in population trends in the various districts of the City.

Following the submission of the 1970 census information, the City Council adopted a plan to redistrict the City. There was a great political feeling in the City that the size of the City Council should be increased. So, the City Council adopted a proposal to increase the number of representatives on the City Council. I shall not go through all the details but will point out to the Court's attention that the first proposal that was submitted to the voters called for the increase of the size of the City Council from its seven-man membership to 11. This was submitted to the voters and an election was held on November 7, 1972, and that proposal was defeated by the electorate.

Following that, another proposal to increase the size [36] of the City Council was adopted by the City Council and submitted to the electorate. A special election was held on March 20, 1973, at which time that proposal was presented to the voters. This proposal called for an increase of the City Council from its present seven members to a nine-member council. Again the electorate defeated this proposal.

So, the issue before this Court is the redistricting of a seven-member City Council as provided in the Charter of the City and as affirmed—apparently as affirmed by the voters in two elections since the 1970 decennial census information has become available.

Of the seven members of the Council, two run at large; five run in districts. The districting of those five districts is the issue which this Court must address.

Now, I have displayed here several maps. The large map—and I might say to the Court that these maps, it has been agreed between counsel that they will be stipulated as being accurate and may be admitted into evidence, and I will offer them in evidence at a later time.

But the large map portrays the City of New Orleans and portrays the distribution of the white and the black population. Each orange dot represents 100 black population.

The information from which this map has been prepared is based on the 1970 decennial population information.

Now, I should like to point out on this map several [37] geographic peculiarities of the City of New Orleans so that all of us might become familiar with the geography and some of the natural boundaries.

I will point out first the line between Jefferson Parish and Orleans Parish. This is a line separating the City of New Orleans from Jefferson Parish. So, we are involved only with the area to the right of that line.

We have here the natural geographic boundary, the Mississippi River, which you will note curves quite markedly through the City and goes on. We have here the

natural boundary of Lake Pontchartrain in the boundary, which follows this line and goes on. I understand that this airport which you see portrayed here is in fact built out into the lake, and the natural boundary of the lake is on the lower side of the airport as portrayed there.

Now, in addition to this, the map does not show the entire City because there is a leg of land that extends out here along Lake Pontchartrain and along the intercoastal waterway, which is a body of water, and I believe the line of that is roughly this. There is a leg of land that extends out some distance between Lake Pontchartrain and the intercoastal waterway. I am informed that this is a very sparsely populated area. I mean by that the extended portion of the City, the leg of the City is sparsely populated, and indeed, as you can see from the map itself, even the center part of this area is [38] very sparsely populated. This area of the City is known as New Orleans East or East New Orleans, and I mean by that this City here.

This area of the City here which borders the lake is known as the Lake area.

There is another very important geographic distinction that I would like to call to the Court's attention, and that is the area which is across the river, across the Mississippi River from the downtown area of the City of New Orleans. It is a part of the City and it is known as Algiers. This area here across the Mississippi River from this area extends along the river and is part of the City of New Orleans.

This again here is the line dividing Orleans Parish from St. Bernard Parish, so that the City line is this black line. This is the Mississippi River. This is the area of Algiers, which is part of the City of New Orleans that is across the river from the rest of the City.

Judge Robinson: Would you mind pointing out where the one bridge between Algiers and downtown New Orleans is?

Mr. Stoner: Yes, Your Honor. The bridge, I am informed, is about in this area, approximately here. It is on sort of the edge of Algiers.

Judge Robinson: I gather that that is not the only bridge but it is the only bridge between Algiers and downtown; is that correct?

[39] Mr. Stoner: You are right, Your Honor. In fact, it is the only bridge in the City of New Orleans. There is a bridge——

Judge Robinson: There is no other bridge between Algiers and New Orleans, only the one bridge?

Mr. Stoner: And the main downtown City? Yes, Your Honor, that's right.

Judge Robinson: No, no, not downtown. Any other place in New Orleans?

Mr. Stoner: Between Algiers and——

Judge Robinson: Any part of New Orleans.

Mr. Stoner: There is only one bridge.

Judge Robinson: Thank you.

Mr. Stoner: There is only one bridge. There is a bridge across the Mississippi considerably up river in Jefferson Parish, but the only bridge between Algiers and the rest of New Orleans is about here. It is one bridge and one bridge only.

Judge Robinson: Now, Algiers at the present time, that is, under the plan under consideration, is now part of the Third District; right?

Mr. Stoner: Under the plan as submitted, and I might——

Judge Robinson: District C, as I recall.

Mr. Stoner: I might refer to this map——

[40] Judge Robinson: Yes, I see.

Mr. Stoner: —which is Exhibit H to the Complaint. Under that plan, the Algiers area is in District C, and is included in the district directly across the river from it.

Judge Robinson: Is that one district also, in District C?

Mr. Stoner: The one bridge?

Judge Robinson: The one bridge.

Mr. Stoner: It is very close to the line, I believe, yes. I see the gentlemen nodding their head. I believe the bridge is very close to the line between Algiers and District C.

There is also a ferry, I understand, approximately in the same position as the bridge that commonly runs between Algiers and this area of the City.

It might be more descriptive on this map to say the other bridge is considerably up river from the bridge which presently exists here to Algiers.

Now, as I said, having oriented ourselves geographically, I would like to point out the natural boundaries of the City again, namely, the Lake, the Mississippi River itself, the intercoastal waterway here, the leg of the City extending out there know as East New Orleans, and Algiers which is in this area.

The evidence will show that Algiers is a growing area and that there has been great controversy and great pressure for [41] another bridge across the river.

I would like at this time to interject and say that the present plan of districting in the City of New Orleans, that is, the plan that has been in existence since 1961, includes Algiers as part of District A, which is this district here, and there has been a great controversy between, the evidence will show, the population of Algiers and the population of District A as to the location of a bridge. In fact, this matter has not been resolved through years of controversy.

As I stated earlier, this map portrays the distribution of the black and the white population of the City of New Orleans, the orange being the black and the green representing white voters, each dot representing 100 population in each case. You will note that the black population is scattered throughout the City and, indeed, in many respects it would appear that the City is an integrated city. There is black population in East New Orleans, along Lake Pontchartrain Park Area, in these areas. I believe that's Ward 7. There is black population out here in 17 interspersed with considerable white population. There is a concentration of black population in this area, which I believe on this exhibit portrays itself as proposed council District B.

There is also considerable black population in this area of the City and in this area and across, indeed, in Algiers there is considerable black population.

[42] So that the population of the City is not concentrated in a core area or in a, if I may use the phrase, ghetto area, but rather is it spread out throughout many areas of the City and indeed practically every area of the City, with the possible exception of this leg of land between the City Park and Lake Pontchartrain here; that doesn't appear to have any black population. But otherwise, the black population is indeed spread throughout the City.

Now, I would call to the Court's attention what has been marked as Plaintiffs' Exhibit 3, which is an exhibit too to the Complaint. It is Exhibit H. I believe that the Court has copies of this exhibit.

This is a map of the City which portrays the plan that is before the Court for consideration, and you will see the five councilmanic districts, the City divided into five councilmanic districts: District A, District B, District C, which is on both sides of the City Park and runs to the lake and extends over to include the entire Algiers area.

You will see District D as being an area here where I am pointing to, and District E including all of East New Orleans and portrayed on this map apparently in this area.

These are the five councilmanic districts that the City Charter calls for as portrayed by the present plan which is before the Court for consideration.

Now, the evidence will show that prior plans that had [43] been submitted, prior public controversy, prior public debate had centered around Algiers. The people of Algiers felt that they had a common interest with one another and therefore should, as a group, be located, be blocked in one councilmanic district. The first plan which had been approved had cut Algiers into three districts, and there was great objection to the cutting of that area of the City into three councilmanic districts.

There had been also proposed plans, I believe, that would cut Algiers in two, but the City Council felt that this being

an overriding issue, namely, the bridge issue, the transportation issue, and the transportation from Algiers to the rest of the City being a vital issue, it was important that Algiers as a body, the people of Algiers as a body should be included in one councilmanic district rather than split among other councilmanic districts.

Now, the other map, which is underneath—I will ask the Court's indulgence just a moment here—is a map that has been stipulated to by the parties, and it has been prepared from current voter registration lists as of June of 1973. In other words, the information on this map is only two months old. It is current information.

In this map each brown dot represe s 50 black registered voters. Each green dot represents 50 white registered voters.

[44] I would call to the Court's attention again the dispersal of the voters throughout the City of New Orleans into the various councilmanic districts as proposed in the plan. Again, we do not have a case of the voters all being bunched but rather geographically the registered voters, just as in the population case, are extended throughout the City.

I believe the evidence will also show that among the black population there is a large percentage of young people, and I mean by that people under 18 years of age. This would tend to explain what might appear to be a little disparagy between the population map and the voter registration map. So that while this map represents population, many of the people included in these figures would be under 18 years of age and thus not eligible to vote.

On the other hand, this map represents those who are 18 years of age and in fact have registered to vote.

Now, the request of this City Council is this: After three years following the '70 decennial census—I belive the evidence will show the information regarding the decennial census was made available about August or September, the first information, of 1970. So, for three years this City has not redistricted itself as required by the City Charter.

The Council of the City is charged with the responsibility of redistricting the City.

The evidence will show that with respect to the [45] various plans, public hearings were held both in the daytime and at night, at which time parties had an opportunity to come forward and to present their views as to the districting of the City. The City Council has adopted the plan which is represented on this map and which has been attached to the Complaint. It believes that this is a fair and equitable plan and complies 100 per cent with Section 5 of the Voting Rights Act of 1965.

We submit that this is a plan that should be approved by this Court as being a viable plan.

I would call the Court's attention to the fact that we are dealing with a plan which really will be only used for a period of seven years because in 1980, by the Charter of the City of New Orleans, again the City Council as it then exists will be required to redistrict itself. So, we are dealing here with a plan which will in fact, looking into the future, be used for the 1974 election. Incidentally, the election will be held in March of '74 for these councilmanic districts. So, we are dealing here with a plan that will be used in 1974 and again in 1978, and prior to the 1982 election the City Council, by its Charter, will be required to redistrict itself to then reflect changes in the pollution that occurred during the next seven years.

So, the plan that being submitted here and which the Court is being to approve is a plan that will be used [46] for two elections, and in 1982 the City will be required to redistrict itself again.

The evidence will show that this is a fair and equitable plan to the voters of New Orleans and does not deprive anyone of his right to vote or dilute his vote by reason of color or creed.

Judge Robinson: Very well, Mr. Stoner.

Mr. Shurtliff, would the Government desire to make an opening statement at this time?

Mr. Shurtliff: Not at this time, Your Honor.

Judge Robinson: Very well.

Mr. Halpin?

Mr. Halpin: Mr. Cotton will make an opening statement, Your Honor.

Mr. Cotton: I would like at this time to make an opening statement.

Judge Robinson: Very well, Mr. Cotton.

Mr. Cotton: As previously claimed, Your Honor, we represent a class of black persons, black people in Louisiana, which comprises 46 per cent of the black population.

As the evidence will show, there has never been a black person on the City Council. In fact, the present City Council is all white.

The evidence will further show that because of the racial complexion of the City Council, black people have [47] suffered tremendously in the amount of city service, municipal service.

The evidence will further show that the two at large seats which we as defendant intervenors—is in fact a quota for white candidates. The evidence will show that it is very difficult for a black person to legitimately run for these two at large seats and to publicly claim a black constituency and at the same time successfully prevail in an election in the City of New Orleans.

I would like to at this point pay deference to counsel and show that in the City of New Orleans there is in fact pockets of black persons along the river, in this area (indicating).

The evidence will further show that the present incumbent city councilmen all live in close proximity to each other, and the first plan and the second plan were guaranteed that they would retain their positions on the City Council.

We intend to prove that throughout the history of electoral politics in the City of New Orleans, racism has always been a predominating factor up until this point. We intend to prove that because of the discrimination in voting in electoral politics in the City of New Orleans, that there is

a residual effect upon the black voting population in the City of New Orleans, so much so that unless this Court takes into account the two at large seats, it will be at least a decade or better [48] before a black person can legitimately and successfully compete for those positions.

We intend to show that the present City Council drafted two plans; that there was adequate time to come up with a plan suitable to meet the guidelines of the Voters Rights Act, and that the present City Council, for reasons and purposes which will later come out in the evidence, did two things: They guaranteed themselves re-election and at the same time purposely, purposely came out with a plan that had the effect of diluting the black vote.

We intend to show that unless seven single member districts are included within the reapportionment plan, black people in the City of New Orleans will at best be confined to five positions and, if the present plan is adopted, only one position, which is questionable.

We intend to show finally that this Court does have the equitable powers to, one, enjoin the elections, and to come up with a plan that is equitable for all parties, both black and white, in City of New Orleans.

Again I say, we represent 46 per cent of the black populace in the City of New Orleans. Black people have been denied legitimate entrance into electoral politics in the City Government in the City of New Orleans. We will show, unless this Court takes significant action, that that trend will continue for the next decade.

[49] Judge Waddy: Do I understand you to say that this Court must come up with a plan for the redistricting?

Mr. Cotton: No. Your Honor. I said that unless this Court takes some action——

Judge Waddy: I thought you said a few minutes ago that this Court had to come up with a plan.

Mr. Cotton: If I did, Your Honor——

Judge Waddy: I was wondering, what was your authority for that.

Mr. Cotton: If I did, Your Honor, I was in error.

Judge Waddy: All right.

Mr. Cotton: Unless this Court takes some action with regard to the plan under consideration, black persons will suffer in the City of New Orleans for the next decade.

Judge Robinson: Very well, Mr. Cotton.

Mr. Stoner, you may proceed with the evidence.

Mr. Stoner: I would like to call as the first witness of the plaintiffs, Councilman Beer of the City of New Orleans.

May it please the Court, the Plaintiff would like to request the rule on witnesses, if we might. I previously said that it would not be necessary, but we have been asked to change that. We will change that.

Judge Robinson: Very well. All witnesses in the case——

Marshal, can you accommodate the witnesses?

[50] The Marshal: Yes, sir.

Judge Robinson: Will you do so before administering the oath.

The Marshal: Yes, sir.

The Deputy Clerk: All witnesses who expect to testify in this case, please follow the marshal to the witness room until called; all witnesses on both sides.

Mr. Shurtliff: May it please the Court,——

Judge Robinson: Mr. Shurtliff.

Mr. Shurtliff: We have a young man who has prepared many of the exhibits for us purely in a technical sense. He is not a resident of New Orleans and not interested in the matter at all. It might be necessary for him to testify. But in the meantime, he would be helpful to us in keeping up with the exhibits.

Judge Robinson: Would you identify him for the record?

Mr. Shurtliff: Mr. Tolmach.

Judge Robinson: And your request is that he be permitted to remain in the courtroom?

Mr. Shurtliff: That's correct.

Judge Robinson: Is there objection?

Mr. Stoner: We have no objection to that.

Mr. Halpin: Your Honor, the only witness that we intended to call was Mr. Johnny Jackson, who is the plaintiff, [51] and——

Judge Robinson: He is a party.

Mr. Halpin: Who is a party, and we would like——

Judge Robinson: He may remain. All right, gentlemen.

Mr. Stoner: No objection.

Judge Robinson: All right. The clerk may administer the oath.

Whereupon,

Peter H. Beer,

one of the plaintiffs herein, was called as a witness in his own behalf, and, having been first duly sworn, was examined and testified as follows:

Mr. Stoner: May it please the Court, before questioning Mr. Beer, I would like to move at this time the admission into evidence of all the exhibits that have been attached to the Complaint. This is done in view of the stipulation that has been entered by the parties. I would also move that the population map which I have referred to in my opening statement and also the voter registration map which I have referred to in my opening statement be admitted in evidence. This too is done with the stipulation of counsel.

Judge Robinson: Very well. Those exhibits will be received. However, Mr. Stoner, I think it would be helpful for purposes of the transcript if you identify each of these exhibits you refer to. You have referred to three maps. You have [52] referred to exhibits attached to the Complaint.

Judge Waddy: They should be marked.

Judge Robinson: Let's have them marked and give them numbers which will be points of reference for the remainder of this trial. Is that agreeable?

Mr. Stoner: Yes.

Judge Robinson: All right. Which one do you want? Do you have any particular order that you want?

Mr. Stoner: I have none. I would have started with Number 1, Exhibit A to the Complaint and go through those and then pick these up. I believe numbers have already been put on these three exhibits.

Judge Waddy: Mrs. Kelly, do you have marks on those?

The Deputy Clerk: Yes, sir, Plaintiffs' No. 1 and No. 2 and No. 3.

Judge Waddy: Now, there are other documents that you are now offering in evidence besides these three?

Mr. Stoner: Yes. The other documents will be Exhibits A through, I believe it is, G, that are attached to the Complaint. This Exhibit 3 is Exhibit H to the Complaint.

Judge Robinson: You simply want the numbers to follow consecutively with reference to all exhibits attached to the Complaint, except what now appears as Exhibit No 3, I take it, is the small map?

Mr. Stoner: No. 3.

[53] Judge Waddy: Let Mr. Stoner find in the Complaint those that he wants marked.

Mr. Stoner: For the record, Exhibit 1 will be the population map.

Judge Robinson: The large map.

Mr. Stoner: The large population may showing the distribution of population in the City of New Orleans between black and white.

Exhibit 2 will be the voter registration map which shows the distribution of registered voters geographically in the City.

Judge Robinson: That's the second largest map.

Mr. Stoner: The second largest map.

Judge Robinson: Very well.

Mr. Stoner: And Exhibit 3 will be the present plan of redistricting, which is a map, and which had been originally attached as Exhibit H to the Complaint.

Judge Robinson: Very well. I am all straight now.

Mr. Stoner: Exhibit 4 will be Exhibit A to the Complaint.

Judge Robinson: That's the Charter?

Mr. Stoner: The excerpt from the Charter of the City of New Orleans. Exhibit 5 will be Exhibit B attached to the Complaint.

Judge Robinson: These are the excerpts from the 1912 [54] Louisiana Act, as I recall?

Mr. Stoner: From the 1912 Act, yes, Your Honor.

Judge Robinson: All right.

Mr. Stoner: Exhibit 6 will be the Exhibit C to the original Complaint, which is a map of the first plan of redistricting as adopted by the City Council. Exhibit 7 is Exhibit A to the original Complaint.

Judge Robinson: Exhibit A or D?

Mr. Stoner: I'm sorry, Exhibit D, and is a Mayor-Council Series Ordinance No. 7496.

Judge Waddy: That is the plan that you are now espousing; is it not?

Mr. Stoner: No, no, it is not. That was the first plan.

Judge Robinson: The first plan?

Mr. Stoner: That was the first plan.

Judge Robinson: Does that have written on it, Mr. Stoner, "Calendar No. 5194"?

Mr. Stoner: It does.

Judge Robinson: Very well.

Mr. Stoner: Yes, it does. Exhibit 8, Plaintiffs' Exhibit 8 would be Exhibit E to the original Complaint and is the Department of Justice's letter dated January 15, 1973, with respect to the first plan, addressed to Mr. Ernest L. Salatich.

Exhibit 9 would be exhibit F to the original Complaint [55] and is an ordinance, Mayor-Council Series Ordinance No. 5154, and is the present plan, the second plan, which is before the Court.

Exhibit 10 would be Exhibit G to the original Complaint and is the Department of Justice's letter dated July 9, 1973, with respect to the second plan and is addressed to Mr. Ernest L. Salatich.

A letter from J. Stanley Pottinger, Assistant Attorney General, Exhibit H to the Complaint—to cover all of the

exhibits that were attached to the Complaint—has previously been identified as Exhibit 3, and that is the map which shows the Council Districts as proposed in the plan which is before the Court.

Judge Robinson: Very well. As stated earlier, they will all be received.

Mr. Stoner: Thank you, Your Honor.

(Plaintiffs' Exhibits 1 through 10 were received in evidence.)

Direct Examination

By Mr. Stoner:

Q. Mr. Beer, would you please state your full name and address. A. My name is Peter H. Beer, and my address is 5855 Bel Air Drive, New Orleans, Louisiana.

Q. Mr. Beer, what is your occupation? [56] A. I am an attorney.

Q. What is your position with respect to this lawsuit? A. I am one of the plaintiffs in the litigation.

Q. Are you a member of the present Council of the City of New Orleans? A. I am.

Q. How long have you been a member of that Council? A. We took office in May of 1970.

Q. You are finishing your first term as a councilman? A. That term will end in April of 1974.

Q. Which district in the City of New Orleans do you presently represent? A. District A.

Judge Waddy: District——

The Witness: A, Your Honor.

By Mr. Stoner:

Q. Mr. Beer, are you familiar with the Charter of the City of New Orleans, particularly the provision which requires the council to redistrict itself following each decennial census? A. Yes.

Q. Could you tell me what action the town took following the 1970 decennial census? A. Yes, sir. The actual

figures with respect to the 1970 census were not made available to us by the Governmental agency [57] which was in charge of the obtaining of the census figures until sometime in the summer, late summer of 1971. At that time, at the direction of the President of the Council, the Council Research Staff immediately transposed those raw figures, Your Honor, from the block by block census which was the way that this raw census figures came, into precincts and wards and subsequently districts of the City, because the raw census, block by block for the City as a whole, was of no use to us in redistricting the City. We had to have the raw census figures translated into district figures in order to redistrict in accordance with the Charter which provided that we must redistrict by population of the districts.

So that the Council Research Staff was directed by the President and the Council to reduce those raw figures immediately to precinct, ward and subsequently district lines in order that we might see, may it please the Court, whether we were over or under in the districts as it had to do with the population of the City as a whole. In other words, the census developed that the City had a total population of slightly under 600,000 people. So that it then, by mathematical computation, in accordance with the Charter, it became necessary for us to redistrict on the basis of approximately 118,000 people in each district, and there was no way to determine whether we were over or under in any particular district until we applied—until the Council Research Staff did the math that had to be [58] done to determine whether, for example, District A needed to be increased or reduced, B, C and D and E likewise.

Those figures, Mr. Stoner, were transposed by the Council Research Staff so that sometime by the end of 1971 we did have available from the efforts of the Council Research Staff that information not only in the raw form turned over to us by the census people but district by district, so that we were able at the very end of 1971 to determine that indeed there were disparities in the numerical definitions

of the districts or that there was disparity in the number of people in the districts, very much out of line with the approximate 118,000 that we needed in each district in accordance with the mandate of the Charter.

Q. Now, when that information became available to the Council, what action did the Council take? A. Well, the Council, first of all, determined for its own information which districts were over and which districts were under, which was pretty much a simple mathematical computation, because we knew that the mean was 118,000. It determined, reading, if the Court please, from right to—I maen from left—from right to left, it was determined that District E represented by Councilman Ciaccio, in the present—not in the plan that you are pointing at, Jim, but in the existing plan, District E, Councilman Ciaccio's district, was way over in number. Instead of having 118,000 in it, it had almost [59] 140,000 in the district.

Q. May I interrupt here for the benefit of the Court and state that the present redistricting map is not here in the courtroom or it is not displayed. The map is the proposed plan, and I believe Mr. Beer's testimony is concerning the present district plan. A. That is correct.

Q. Am I correct on that? A. Yes.

Judge Robinson: The pre-1970 plan?

The Witness: Yes, Your Honor; the one that we were elected under.

Judge Robinson: Do we have such a plan? Will it be coming into evidence?

Mr. Stoner: We do have such a plan, if it could be helpful.

Judge Robinson: No, you can continue with your preferred order of presentation. It is quite all right.

The Witness: If Your Honor please, District E was over by a fairly substantial number from the mean that we knew we were guided by under the provisions of the Charter. District D, represented by Councilman Lambert, was slightly under; perhaps 3,000 under the 118,000 mean.

District C, represented by Councilman Dupuy, was considerably under the mean. I think almost in five figures. [60] I think it was down around 97 or 98 thousand.

District B, represented by Councilman Sapir, was also considerably under the mean. District A, which I represented, was about like Councilman Ciaccio's. It was way over, and the reasons for that were, as counsel had previously pointed out to the Court, the growth areas in New Orleans have been, to a substantial extent, the 9th Ward, which is Councilman Ciaccio's district, and Algiers, which is part of District A in the present circumstances. So, that perhaps accounted for the disparity.

So, it was apparent to the Council that the districts were clearly in need of redefinition in terms of lines because they were very much in disparity with the provisions of the Charter, which said every 10 years the Council must redistrict so as to try to keep the numbers even in each district.

By Mr. Stoner:

Q. Now, when that became apparent, did there come a time when a plan of redistricting was presented to the Council and adopted by the Council? A. Yes, there was a plan as counsel pointed out in opening arguments.

May it please the Court, there is this problem, because of the fact that the 15th Ward of the City is across the river—that's where Mr. Stoner refers to as Algiers. It was obvious that some rather substantial change had to be made [61] in the district lines to take into account this disparity in population. So that the first plan was a plan that had as its cornerstone the redistricting by using Algiers to make up the numbers, so to speak, and Algiers was divided into three portions and assigned to certain districts in order to bring the numbers up, and that in effect resulted in not having to make very many other changes.

There was a great reaction against that plan in Algiers where the people were unhappy about being, as they called

it, split up. When that plan was voted on in the Council, it was passed six to one. I voted against it by reason of the fact that I felt as a representative of that area that the people had expressed themselves and that I was mandated to vote against it.

It passed six to one but was subsequently, I think about nine months later, disallowed by an opinion from the Department of Justice.

Q. That is the plan that we have referred to as Plan 1 and is the plan that was not approved by the Department of Justice in January of 1973; is that correct? A. That's correct, sir.

Q. After the adoption of that plan, were there any proposals to change the makeup of the Charter of the City of New Orleans so as to change the number of councilmanic districts? A. Yes, sir.

[62] Judge Waddy: Is that an issue in question? I am asking counsel for the Government. The question is asked of the witness now as to the proposal to change the makeup of the council. Is that disputed? Is that questioned?

Mr. Shurtliff: No.

Judge Waddy: I think as a question of time, on matters that are not disputed, we can proceed without using that time.

Mr. Stoner: May we stipulate that there was an ordinance adopted by the City Council to increase the size of the City Council to 11, consisting of nine elected councilmanic districts and two at large.

May we stipulate to that?

Mr. Shurtliff: We may, and the referendum election was defeated by a vote of the people.

Judge Robinson: Do you accept that amendment to the stipulation?

Mr. Halpin: With the understanding that that stipulation does not imply that the City Councilmen in fact supported the enlargement of the City Council and made any effort to attempt ot have the electorate of the City of New Orleans——

Judge Waddy: The stipulation is only to the facts. The inferences to be drawn from the facts may be argued at the appropriate time.

Mr. Halpin: That's the only indication.

[63] Mr. Stoner: May we at the same time stipulate that following the vote by the electorate and the failure of the ordinance to be approved by the electorate, another plan to increase the size of the City Council was adopted by the City Council, namely, a plan to increase the Council to nine, consisting of seven councilmanic districts and two at large, and that that matter was presented to the electorate.

Judge Robinson: May I make a suggestion, if you don't mind. We would be taking the recess for lunch in a very few minutes. Why not get together with counsel for the Government, that is, for the defendant, and for the intervenors, and see how much you gentlemen can stipulate in terms of paragraphs of your complaint. That is the only document, I think, that would serve as a substantial point of reference, because we simply haven't had time to get responsive pleadings from other parties.

Do you think you gentlemen might do that? And would you give me an estimate as to how much additional time we would need to give you, that is, additional to the normal hour and 15 minutes for lunch.

Mr. Stoner: Your Honor, I think we should be able to stipulate those facts in a matter of minutes.

Judge Waddy: I think if you could stipulate, we could expedite this matter without losing the effect in any manner.

Mr. Stoner: Yes.

[64] Judge Robinson: Very well. We will take the luncheon recess at this point until 1:45. We are hopeful that when we resume at 1:45, you will have such a stipulation. If you need a few minutes more, notify the marshal.

Mr. Stoner: Thank you.

Judge Robinson: And we will indulge you.

At this point the Court will stand in recess until 1:45.

(Whereupon, at 12:35 o'clock p. m., proceedings in the above-entitled matter were recessed to reconvene at 1:45 o'clock p. m. this same date.)

[65] AFTERNOON SESSION

(Whereupon, at 1:55 o'clock p. m., proceedings in the above-entitled matter were resumed at the conclusion of the luncheon recess.)

Judge Robinson: Mr. Stoner, you may resume.

Mr. Stoner: Thank you, Your Honor. During the recess we have attempted to arrive at stipulations based on the allegations as contained in the Complaint.

I can report that it is stipulated between the parties that the matters alleged in Paragraphs 1 through 8 will be stipulated to.

Judge Robinson: So stipulated, gentlemen.

Mr. Stoner: With respect to Paragraph 9 and the Complaint, the Government will stipulate to the allegation contained in that count. The intervenors would stipulate to the facts in there except the second sentence. That they would deny.

Judge Robinson: Very well. Did you say the second sentence?

Mr. Stoner: The second sentence in Paragraph 9 will be denied by the intervenors but otherwise stipulated by the parties.

Judge Robinson: Very well.

Mr. Stoner: With respect to Paragraph 10 of the Complaint, the parties will stipulate to everything except the [66] date. The Government will not stipulate to the date of May 4, 1972.

Judge Waddy: Will they stipulate as to any date?

Mr. Stoner: Mr. Shurtliff, will you stipulate as to any date?

Mr. Shurtliff: We would stipulate, Your Honor, that it was submitted in the fall of 1972 but——

Judge Waddy: Not May 4th?

Mr. Shurtliff: It was not May 4th.

Mr. Stoner: I believe it is the Government's position that the submission of May 4, 1972, was not a complete submission.

Judge Corcoran: Is it important, so long as it was denied anyway?

Judge Waddy: But, nevertheless, this is a fair submission; is it not?

Mr. Stoner: Yes.

Judge Waddy: This is a fair submission, but it was stipulated that it was submitted.

Mr. Stoner: Yes.

Judge Waddy: All right.

Mr. Stoner: With respect to Paragraph 11 of the Complaint, the matters contained therein will be stipulated by the parties. The matters in Paragraph 12 of the Complaint will not be stipulated. The matters contained in Paragraphs 13, [67] 14, 15 and 16, all of which appear on Page 4 of the Complaint, will be stipulated.

Judge Corcoran: Including the figures?

Mr. Stoner: Yes, including the data contained in Paragraph 16 of the Complaint. Paragraph 17 of the Complaint will not be stipulated. I believe the parties can agree that hearings were held.

Paragraph 18 of the Complaint will be stipulated. The matters in Paragraph 19 cannot be stipulated.

With respect to that, I believe the parties can stipulate that the ordinance was passed by the Council and that it was disapproved by the Assistant Attorney General.

Judge Robinson: Are counsel agreeable to so much by way of stipulation?

Mr. Shurtliff: We are.

Mr. Halpin: Yes.

Judge Robinson: Very well.

Mr. Stoner: Paragraph 20 cannot be stipulated. I believe the parties can stipulate with respect to the matters in Paragraph 20 that the matter was submitted to the electorate and that the vote was to retain the seven-man council or to replace it with an eleven-man council.

Judge Robinson: Would you repeat that again, Mr. Stoner?

Mr. Stoner: I believe the parties can stipulate that [68] the matter was submitted to the electorate, giving the electorate the choice of either keeping the present seven-man council or replacing it with an eleven-man council.

Judge Robinson: Very well. Is that agreed to, gentlemen?

Mr. Shurtliff: May it please the Court, I don't have any serious reservation about it, but I would not want the stipulation because it wasn't framed to the people in terms of a choice. The issue was to increase the size of the City Council from nine to a nine/two; nine districts, two at large. That was the question. There was no question on the ballot as to retaining the present system. That was the result of the vote of the people, however.

Judge Robinson: You will stipulate, however, that it was submitted to the electorate, period?

Mr. Shurtliff: Yes, sir.

Judge Robinson: Is that agreeable, Mr. Halpin?

Mr. Halpin: Yes.

Mr. Stoner: I believe the parties will also stipulate that the proposition did not pass.

Judge Robinson: Is that agreeable?

Mr. Shurtliff: Yes.

Mr. Halpin: Yes.

Judge Robinson: All right.

Mr. Stoner: With respect to the items in Paragraph 21 [69] of the Complaint, the parties cannot stipulate, and I believe that the parties cannot stipulate to the balance of the Complaint, although I would submit that the parties can stipulate as to the passing of the ordinance to increase the Council to nine men, a nine-man council, and that that

matter was presented to the electorate and that it was defeated.

Mr. Shurtliff?

Mr. Shurtliff: We would stipulate to that.

Mr. Halpin: Yes.

Judge Robinson: Very well. Does that conclude the stipulations, Mr. Stoner?

Mr. Stoner: That would conclude the stipulations as to the Complaint.

Judge Robinson: Very well. Thank you very much. I should think that this should help a great deal.

You may resume your examination of Mr. Beer.

Mr. Stoner: Thank you. There is one other stipulation that the parties have agreed to; that is, the map that has been superimposed on the large map as being a map representing the present districts as presently constituted, that is, as constituted since 1961 to the present time.

Judge Robinson: All right, No. 11.

Judge Waddy: Is that Plaintiffs' No. 11. I would ask that it be admitted into evidence as Plaintiffs' Exhibit No. 11.

[70] Judge Robinson: By stipulation it will be admitted.

(Plaintiffs' Exhibit No. 11 was admitted in evidence.)

Mr. Stoner: Now, resuming the questioning of Mr. Beer, if I may——

Judge Waddy: I think it would not be necessary under the circumstances to question Mr. Beer concerning any of the matters that have been stipulated.

Mr. Stoner: Yes. Thank you, Your Honor.

Direct Examination (Continued)

By Mr. Stoner:

Q. Mr. Beer, I understand from your previous testimony that you at the present time represent District A. A. Yes.

Q. Could you describe what sections of the City in terms of sections of the City that present district represents? A. It represents the section of the City that is generally referred to as the Carrolltown Section, the University section, the Uptown section, and then it crosses over and down river and represents the entire area which is known as Algiers, which is in fact the 15th Ward of the City. It comprises the 17th Ward, which comes in at that rather thin line, Your Honor, which is the line between the Jefferson Parish boundary and a wide thoroughfare that cuts through town, and inside of that sort of thin line is what is called the 17th Ward. It opens up [71] a little bit at the bottom and is still the 17th Ward.

The 16th Ward is just under it. The 14th Ward is in that sweep over to where the line is drawn, and then it skips over the river and goes to Algiers. That's the 15th Ward. So that District A is comprised of wards of the City in their entirety, and they are the 14th Ward, the 15th Ward, the 16th Ward and the 17th Ward.

Q. Now, Mr. Beer, would it be fair to state that the Algiers section is geographically some distance from the other part of your district? A. Yes.

Q. And have you found in representing that district that that creates problems? A. Well it has created a problem which you and the Court alluded to in terms of the fact that there is but one bridge and it is up—it is, I should say, down river in the sense that it is just about at the line between District B and District C. Yes, sir, right in there. And there is a pressure on the part of the people living there. That bridge is satisfactory in the sense that it is in Algiers and serves Algiers into the downtown area.

But there is a tremendous pressure from the population that is on the other side of the river where you are pointing to now to get across, and there has been a tremendous pressure to put that other crossing in District A uptown. People uptown [72] in District A are violently opposed to the bridge because they contend it will turn their area into a thoroughfare, whereas the people in Algiers are very much in favor of it because they contend that it will take the pressure off of the only bridge that exists, which is fine for them, but is jammed about two and a half times its constructed capacity because of the great pressures from that whole sweep there also using it to come into the central business district.

Q. Now, has this caused any problems for you as a councilman in fairly representing the respecitve interests of your council district? A. Well, it was created a sort of schizophrenia in the sense that there is a tremendous pressure from the constituency of about 55 or 56 thousand people in the Algiers section for a bridge to come into uptown and a very violent reaction on the part of that whole uptown section, which is probably another 50 thousand people, against any bridge coming into that area. So, of course, it has been entirely impossible to be a partisan in behalf of both interests.

Q. Now, could you identify on this map where the canal ferry is located? A. Yes, sir. It also runs from District C at Canal Street right across to District A, Algiers. In other words, the connecting link of the Canal Street Ferry is right in the middle of what is now C and into the middle of what is now A across [73] the river.

Q. Is there any other public transportation means of getting from the main part of the city to Algiers? A. No, sir. That Canal Street Ferry and the bridge are the two public or privately-owned sources of access.

Q. Now, have there been any problems with respect to traffic on the ferry across the river? A. Yes, sir. Well, it's been entirely inadequate in the sense that it doesn't come anywhere near taking the pressure off of the need for that access, and it's also been compounded and complicated by the fact that railroad tracks run along the edge of the river there and very often block that ferry access way, which is then inoperative sometimes for rather long periods of time, in terms of motorists trying to get on the ferry before it leaves to make its roundtrip across the river.

Q. How long does it take—let me ask, first, how wide is the river at this—— A. It is a mile and one-eighth.

Q. A mile and one-eighth? A. Yes, sir.

Q. How long does it take to cross the river on the ferry under normal traffic conditions? A. Once aboard, I would say it takes somewhere between 10 and 15 minutes. But, sometimes, Jim, the line gets pretty long and it doesn't come anywhere near taking all the people who [74] are in that line.

Q. What I understand from your testimony is that the pressure for transportation across the river to Algiers is a very great problem for the populace of New Orleans at the present time? A. It's probably the most underlying political problem outside of the usual—it's a singular most underlying problem, I would say, in terms of housekeeping.

Q. Does the City Council have authority to authorize the building of a bridge or to increase ferry service? A. No, sir. This is all run through the office of the State Department of Highways.

Q. So, it is your testimony that whether or not a bridge, another bridge should be constructed or an additional ferry should be put on or traffic routes is beyond the power of the City Council of New Orleans to deal with? A. Yes. The City Council, in fact, has even ordinanced certain traffic regulatory ordinances on the bridge hoping to do something to alleviate the crush of traffic in terms of truck use at certain authorized times and vehicular use at certain authorized times and minimum speeds, contending that they could at least ordinance traffic regulations because the bridge actually began and ended in Orleans Parish. But the bridge authority, which is under the State, has effectively just disregarded our ordinances. The ordinances which we passed in [75] connection with traffic regulations on the bridge have not been enforced by the bridge police who are responsible to their board, which is a state created agency.

Q. Now, describe the type of population that lives in the Algiers section. I mean by that, is it a stable community, a growing community, or what is the status of the Algiers area of the City? A. Well, Algiers is essentially a bedroom, but I would have to say that it really is far more a complex than that. But in my own mind, I divide Algiers into Old Algiers and New Algiers, and the demarcation is considerable.

New Algiers is pretty much an expanding area of—(Mr. Stoner indicating on map)—yes, sir, in the back, is more what you would think of as suburbia with some rather substantial sprinklings of apartment buildings, a fairly transient amount of population. It is a fairly local population in the suburbia type sections.

Then Old Algiers is a pretty mixed black and white area of people who, in many instances, have lived in Algiers a long time. Algiers grew up at the river and only, Your Honors, when the bridge was built, when the only access was the ferry boat, Algiers pretty much clustered around the river. When the bridge was built, it generated the expansion into the back part of that 15th Ward in terms of, I would say, middle to fairly expensive homes, and also a great number of apartments.

[76] Q. Now, when was the bridge built, Mr. Beer? Do you know approximately? A. It was in the early '50's. I can't exactly state. It was sometime in the early '50's that it was completed.

Q. Is there anything in common here between the river area of Algiers and the river area directly across the river from Algiers? A. Well, I would say that, of course, right on the river, the use is pretty much identical in terms of the fact that there is a lot of river activity. As you go away from the river in both directions, you get into residential areas.

Q. But the activity along the river at both places is similar; is it? A. Yes.

Q. Is it barge traffic and shipping? A. Barge and ship traffic. For example, we have wharves on both sides of the river at that point, although the main wharfage is on the side—yes, sir, on that side.

Q. You mean this (indicating), the old section, the center section, where it says Port Algiers? A. Yes.

Q. But there is wharfage in Algiers; is there? A. Yes, and a lot of barge activity on the river.

Q. Now, is there any similarity between the river frontage of your two districts? I am speaking of Algiers and the [77] present district that you represent. A. Not very much. Once you get up to what we call uptown, the wharf system has just about ended. (Mr. Stoner indicating on map.) Yes, sir. In other words, National Avenue, which would be about the second big street in, right about there, is the last of the wharves. There is a wharf there. Then the frontage from there on up to the Parish line is pretty much frontage in a park area, the Audibon Park Area.

Q. Now, with respect to District B, is that pretty much what is on here, the river frontage, that wharf area? A. Yes, sir, entirely. That's the heart of the wharf area.

Q. Do I understand that all of the river frontage of present District C is wharfage? A. Yes, I would say all the way up to and including parts of District E on the river are what you think of traditionally as wharf area.

Q. Now, this present District A, has the population grown in the last 10 years, I mean, since '61 when the last redistricting occurred? A. Yes, it has grown primarily because of the development in Algiers that I have previously referred to. I would say that it hasn't grown in any substantial extent on the other side except perhaps in that thin line area going towards the lake, there has been, I'd say, some additional home building, [78] but nothing like the massive construction in Algiers.

Q. Now, you testified this morning before the luncheon break that there have been statistics as to the 1970 census, the population of the districts as they then existed. Now, on those statistics, was Section A, the population of Section A, present Section A, more than 118,000? A. Yes, sir, it was almost 140,000.

Q. One hundred forty thousand? A. It was about, let's say, 137,000 or 138,000.

Q. Now, do you draw from that then that it would be necessary to decrease the size of present District A in the 1970 redistricting plan? A. The Charter required it. There was no room to doubt that the provisions of the Charter in reference to the decennial census required us to comply in numbers to it. So that the math was easy. I needed to, in effect, lose 20,000 people.

Q. Now, turning our attention to Exhibit 3, which is the present plan that is before the Court, is there any similarity between the population of Algiers—and I call the Court's attention to the fact that the proposed District C includes all of Algiers as well as the area directly across the river from Algiers and extends on up to the lake and through the City park. A. Yes, sir.

Q. Now, is there any similarity between the population of those two districts other than along the river, which I think [79] you have previously fully explored? A. Yes, there is a definite similarity in the sense that there is back in that back part of C and in the bottom part of C and in Algiers and almost—I'd say that a lot of the areas there would be almost interchangeable in the sense of looking the same and providing about the same type of single family housing.

Q. Could they be described as relatively recent growth areas of the City? A. Yes. The lakefront area, what you are pointing at now, of C is a little older growth area than the bottom part of proposed C, but essentially the two are very similar.

Q. So that proposed District C has similarities along the river in Algiers, and likewise in the extremities; both have similarities in the type of housing and the type of people. Is that a fair statement? A. That is a fair statement.

Q. Now, Mr. Beer, did there come a time when the City Council took under advisement a plan of redistricting after the first plan was disapproved by the Attorney General and after the two referendums were defeated? A. That's correct.

Q. Could you describe to us when that was, approximately, and, furthermore, what factors did you as a councilman consider in determining the redistricting or considering the [80] redistricting of the City? A. Well, actually, to be completely specific, there had really been four different efforts where the council went to the people with proposals to increase the size of the council. For various reasons, all but two of those ordinances ended before any action was actually taken by the people. The matter could not even go to the people for decision without ordinances enacting that as a proposal for the people to vote on under the terms and provisions of the Charter. But, without going into all that detail, because I think it is——

Q. Well, do I understand the purport of that testimony to be that the only way an election could be held would be for the council first to come up with a proposal and authorize the election? A. Exactly. In other words, the council had to take affirmative action by ordinance in order to even submit to the people the question of "Do you desire to increase the size of the council?" The council is not able on its own to do that. It is a Charter provision and it must go to the people for a vote. It is just like a corporate charter cannot be changed by the Board of Directors. The council could only authorize its as a legitimate issue to be decided by the people, and on its own motion it did that on four separate occasions and passed four separate ordinances with respect to either nine or 11-member plans.

[81] Finally, the people having spoken on the two that actually got to the people, not through any fault of the council but by some Court action by some of the people who are interested in this litigation, apparently, it nevertheless evolved that in neither of the instances where the ordinances went to the people did the people authorize the increase.

Accordingly, by late '72, or early '73, it was apparent to the Council that there was no way to redistrict in anything other than a five district, two councilmen at large

proposal, and the other proposals having already been voted down by the people. So that there was no longer any way that the Charter could be changed. The time had come for us to resolve the issue on the basis of two councilmen at large and five district councilmen, the people having spoken on two occasions, the Court on one other one, and the Mayo on one other one, to obviate the ability of the people to have any further opportunity to increase the size of the council.

Q. All right. Now, at that posture, what did the council do? A. The Council restricted—it held public hearings and consulted with the Council Research Director and his the ordinance which subsequently led to a vote of the staff and subsequently Councilman Moreau introduced the ordinance which subsequently led to a vote of the Council to redistrict in accordance with——

Q. Exhibit C? [82] A. Excuse me. —with the plan that is——

Q. Exhibit 3? A. Yes, sir.

Q. Now, what factors did you as a member of the Council take into consideration in voting for this plan? A. Well, I took into consideration the mandate, which we obviously had from the Charter to do it, and I would say primarily the guidelines set out in the Voting Rights Act of 1965 and in certain litigations that had preceded all of this in Louisiana, the wording of which all of us became familiar with in the course of our discussions with the Council Research Staff and which, if I may refer——

Q. Are you referring to litigation regarding the redistricting of the City for the purposes of the State Senate anud the State House of Representatives? A. Yes, sir. We had before us the language of the United States District Court in Bussie versus the Governor of Louisiana, which is in 333 Fed. Sup. 452 at 456. It is very brief. It says that it must within reason conform to the one-man one-vote rule. It must not be so designed as to dilute the voting strength of any person or group and it must not be a device of gerrymandering in order to favor any person

or group. When possible it should follow parish and ward lines as well as historical and natural boundaries, but the use of such boundaries could not be tolerated if either the purpose or the result [83] is to deprive the people of the benefit of the one-man one-vote principle, or to deprive them of the anti-dilution principle now firmly established in the law.

Judge Corcoran: What was that citation again?

By Mr. Stoner:

Q. Would you repeat the citation? A. Your Honor, it is 333 Fed. Sup. 452 at 456.

Q. Do I understand that that was the decision of the Court in the redistricting of the City with respect to the Louisiana State Legislature? A. Yes, sir, specifically with respect to the senatorial districts.

Q. Now, did the redistricting plan which is here, Exhibit C, follow the traditional ward lines of the City? A. Yes. It was no longer possible to follow them exactly because the exact ward lines didn't work out mathematically. So, the Council Research Staff tried to follow them as closely as they could, bearing in mind the old lines or the lines that existed as a result of the redistricting that took place in 1961, the only rather substantial difference being the consensus of the Council that Algiers should be returned to District C where it had traditionally been but for this one redistricting that took place in 1961. District C had previously included all of Algiers. It was removed in the redistricting of 1961, and the consensus of the Council in what [84] we have come to refer to as the Moreau Plan, was to return Algiers to District C.

Q. (Indicating on map.) A. Correct. With that exception, the plan generally followed as best it could the line that existed in the '61 plan. You can see that A having had Algiers with approximately 55 or 58 thousand people taken away from it on that side of the river, had to thicken out some on that side. (Mr. Stoner indicating.) Yes, sir.

So, you see where it thickens out pretty much all along the way, and this was, I would assume, and feel confident to state, in accordance with the general tenor of the directions that the Council had given in general concern to the Council Research Director and his staff, which were subsequently translated into this chart.

Q. Now, what happened in the proposed plan with respect to District B? A. Well, again, District B was again pretty much widened out, so to speak, because it had not included enough—District B in '61 was very short by the numbers. It was down around 100,000 and needed 118,000. So, the effort was made to widen it consistent with the mandate of that Federal Court opinion which said that the lines must be as exact and composite as possible, and an effort was made to simply expand it, holding essentially what it had before, giving way to the expansion that [85] had been necessitated in A, which pushed it to your right a little bit, and then in turn it was pushed to the right a little bit.

Q. Now, Mr. Beer, what is this street right here, this large black line? A. I can't read it.

Judge Robinson: Do you want to step over to the diagram?

By Mr. Stoner:

Q. It's Canal. A. Okay. I can see it, Your Honor. That would be Canal Street.

Q. It is labeled on the map as being Canal Street. A. Yes.

Q. Would I take it from your testimony that the area from old District B that had been added would be to push the B line on to Canal Street and make that the dividing line between C and B, and to add the area that seems to be Pontchartrain Expressway, between Pontchartrain Expressway and Canal Street? A. That's correct.

Q. This would be necessitated by the fact that the old District A was broadened so as to increase its population? A. Well, Jim, it was, plus the fact that B had to be even a little bit more because it went up to 200,000.

Q. Do you mean by that it was expanded towards the lake? [86] A. Well, in other words, if you had just pushed it over enough to offset what A had needed, that wasn't enough, because B was still short in the old figures by about 18 or 19 thousand. So, you had to go a little bit more, and that's how it got to Canal Street.

Q. Now, do you know what the population of District B is, white versus black? A. No. I know that there is a black majority.

Judge Robinson: I had understood those figures are stipulated. They appear in Paragraph 16 of the Complaint.

Mr. Stoner: Yes, Your Honor.

Q. So that District B has a majority-——

Judge Robinson: Was that the predicate for a question to the witness? Did you ask the question about the population figures as a predicate for another question?

Mr. Stoner: Yes, I did.

Judge Robinson: Well, just go ahead and use them. Do you have the figures? I have them here, 76,109. You said B; didn't you?

Mr. Stoner: Yes, District B has a population——

Judge Robinson: Frame your question on the basis of the data in Paragraph 16. That will be quite all right.

Mr. Stoner: Thank you, Your Honor. I would call the Court's attention to the fact that District B does have a [87] majority of black voters.

Judge Waddy: The stipulation is that it has 53.1 per cent.

Mr. Stoner: 53.1 per cent black voters.

Judge Robinson: Well, yes. In one place your allegation is registered voters. But in the data set forth in Paragraph 16, it says population, and then when you get back to the percentages, you get back to registered voters again. Perhaps you could explain that to us.

Mr. Stoner: Yes, sir, Your Honor. I would read that on the second plan, the population of District B as being 118,678 people.

Judge Robinson: That's population; right.

Mr. Stoner: Right. The population being divided 76,109 black and 42,569 white.

Judge Robinson: So, the only statistics we have in Paragraph 16 that have to do with registered voters are the percentage figures; correct?

Mr. Stoner: That's right, Your Honor, and that figure is 53.1 per cent of the registered voters.

By Mr. Stoner:

Q. Now, were there any other factors that the City Council considered or that you as a member of the City Council considered in adopting the plan which is Exhibit 3? A. Well, the plan as such, as proposed by Councilman [88] Moreau on the basis, as I understand it, of certain plans that he had requested be prepared for his review. This was the plan that he subsequently introduced at a time when, I believe, he was President of the Council, and this is the plan that the members of the Council subsequently passed; this plan having not been passed by them until subsequent to the public hearings which were held in connection with the redistricting matter generally.

Q. So, you are stating that this was a product of the City Council Planning Staff and, in addition, public hearings were held on the proposal—— A. Yes.

Q. —prior to the time that the Council adopted the plan? A. Yes.

Q. Now, was the plan publicized, well-publicized in the City and among the voters prior to the holding of the public hearings A. I would say that it was well-publicized in the sense that various newspaper articles carried the lines and discussed it, and it was discussed in the papers, not just the main issue papers, but the papers were, I think, of predominantly black subscription, as well as papers that had predominant—for example, the French Quarter population that read them. It was a fairly well articulated matter. I wouldn't say that there was [89] any unanimity of thought about it, but it certainly received wide consideration and discussion.

Q. And there was wide publicity to the proposed plan prior to its adoption? A. Yes.

Q. Now, did you attend the public hearings or hearing in connection with the proposed plan? A. Yes. The Council held those public hearings. They were held in the Council Chamber of the City of New Orleans.

Q. Were they well-attended hearings? A. Yes.

Q. Were various groups from around the City and throughout the City represented and given an opportunity to express their views with respect to the plan? A. Yes.

Q. Did you as a Council member take those matters into consideration and thier objections into consideration or their proposals into consideration in adopting the present plan? A. Yes, I would say that we—I can't, Jim, possibly describe the mental process of anyone other than myself. But I would say that in terms of my own mental processes, I tried to consider the factors that had been underlined at the public hearings and also tried to consider the validity of it in terms of all of the things that you mentioned, plus the overall effect it would have on the City.

[90] I might say that I don't think there is a question of that fact, that there is a general regard for the fact that the percentages do exist in terms of the black and white population and that there is clearly a basis for understanding the very strong contentions that were made by various groups concerning black representation on the City Council.

Q. Did you vote for this plan, Mr. Beer? A. Yes, sir.

Q. Do you believe it to be a fair and equitable plan for the redistricting of the City and in compliance with Section 5 of the Voting Rights Act of 1965 and otherwise in compliance with the law? A. I do.

Q. And is this plan essentially similar to the plan that was adopted by the Court in the redistricting of the area of the City for the State Senate? A. Well, I can't say that it is or isn't because I am not exactly sure of the Senate district lines, but the traditional north-south run-

ning boundaries are certainly the same, essentially, as the senatorial districts.

Q. Now, Mr. Beer, have there been—— A. For the Court's benefit, I probably should point out that the orientation of that map is exactly north-south.

Q. You mean by that from the river to the lake? A. Yes, sir, it is straight north; from the bend in the [91] river up to the lake it is due north, right.

Q. Mr. Beer, are you aware of any citywide elections that have been held in the recent past in which a black candidate was a candidate for any citywide office? A. Yes.

Q. What was the office? A. Well, I think the most recent citywide election was for a seat on what is called the Louisiana Court of Appeals for the Fourth Circuit, which is the Circuit Court which hears cases on appeal from various district courts throughout the general area. A Judge Morial, who had formerly served in the State Legislature, was elected to that position citywide.

Q. What is the color of Judge Morial? A. He is black.

Q. Now, are you aware of any other black men who have run for citywide office in the recent past? A. Judge Augustine was recently elected to the Criminal District Court for the Parish of Orleans on a citywide basis. Judge Morial had prior to that election been elected to serve as the juvenile judge of the city. Just offhand I don't recall any other recent citywide elections. There have been a number of black representatives in the state legislature elected from the city. I think that's the answer that I would give to you.

Q. Judge Morial's election that you refer to, was that a recent election and could you tell us when they had—— [92] A. Well, he hasn't taken office yet.

Q. When was the election held? A. I would say it was within the last six months. I'm under oath and I can't be positive of that, but I think it was within approximately that time.

Q. How about the other elections that you have referred to; have they been in the recent past or was that sometime

ago? A. Judge Augustine was elected since we took office. So, that would be at least since 1970. Again, I can't tell you the exact date.

Q. So at least in those two occasions, the two elections that you referred to, both have occurred since 1970 and they have both involved black men running for an office on a citywide basis, and in both cases the black man has been elected; is that correct? A. Yes. In all of the instances that I recall, there were white candidates.

Q. Now, do you know the President of the School Board of the City of New Orleans? A. Yes.

Q. Do you know the race, the color of that person? A. Yes. I wasn't thinking about the School Board. There have been black citizens elected to the School Boards on a citywide basis.

Q. They are not by districts but rather by citywide basis? [93] A. That's correct.

Q. Do you know how many members have been elected on a citywide basis to the School Board who are of the black race, black color? A. I think two. I think two. I am not sure.

Q. Have they been recent elections? A. Yes. The School Board is particularly and peculiarly outside of the ambit of the City Council's day-to-day activities, and I will have to plead guilty to not being as completely current with their status.

Q. But you do know that members of the black—or persons who are black in color have been elected on a citywide election to the School Board? A. Very definitely; yes, sir.

Q. Now, Mr. Beer, what are the responsibilities of a City Councilman in the City of New Orleans? Is there any distinction between the members at large, the duties of the members at large and the duties of the district councilmen? A. Yes. Addressing myself to the first part of your question, I would say that the duties of the Council generally are to serve as the legislative branch of the Government of the City of New Orleans. I might say that

New Orleans at one time had a commission form of Government where the old commission council members were considered more as in an administrative capacity than councilmen are under the provisions of the home [94] rule charter which passed in about 1952. Since the home rule charter, the Council of the City of New Orleans has formed a legislative branch of the Government of the City.

As far as the distinction is concerned, the councilmen at large are, as the name implies, elected throughout the entire City.

If the Court please, that means from the Parish line—New Orleans has a strange peculiarity in the sense that it occupies all of Orleans Parish, which is the same as a county in any other state. Parishes in Louisiana are essentially the same as counties in the other 49 states. We just happen to call them parishes.

But Orleans Parish has exactly the same lines as the City of New Orleans. The City of New Orleans includes all of Orleans Parish. Those two councilmen at large are elected from all of Orleans Parish. They run in the same citywide manner as the Mayor of the City in that he is elected as well from every voter in the City, which is also every voter in the parish.

Their duties are distinct in that only they may serve as President of the City Council. The district councilmen can only serve as Vice President of the Council.

But perhaps more important, they represent the voice of the people in the City as a whole instead of the various districts, and they also serve in a number of board capacities which carry perhaps even greater responsibility than the district [95] councilmen in terms of the types of appointments that they serve in. But they have only the same vote on the Council in terms of the legislative processes of the Council.

Q. Now, do they have any administrative duties which the district councilmen do not have? A. Yes. They serve as the acting mayor. One may be designated by the mayor as acting mayor in the absence of the mayor from the City

for some charter-provided length of time, which I am not exactly sure of.

Q. Now, you refer to the mayor. Is the mayor an elected official? A. Yes, sir.

Q. And are his responsibilities primarily that of the executive—— A. Yes.

Q. —as opposed to the legislative? A. Yes, sir; he is the chief executive of the City and the head of the administration of the City as opposed to the legislative branch, which is the Council.

Q. But in the vote on City issues, do I understand that each of the seven has an equal vote? A. That's exactly right. Any measure, except to override a veto or one or two other unusual type matters, is passed on the vote of four councilmen, a majority of the seven-member Council. [96] Q. Now, at the time that this plan which is before the Court was adopted by the Council, was there any conscious effort made to retain the present members of the Council, to draw the district line so as to retain them in their districts? A. Well, I will have to answer this way: They were in those districts, so it would have taken a conscientious effort to put them out of the district in drawing the lines. In other words, each one of us, by reason of our having been elected to that office, had to reside in the particular district that is indicated in the center map. So, if you in effect expanded those district lines, you would have had to have gerrymandered them in some way to take us out of our districts. We all were in districts that were, in most instances, expanded in terms of the ones that had to be expanded.

Councilman Ciaccio represents all of the 9th Ward and happens to live in one section of it. But, essentially, there was no calculated attempt, as far as I am concerned, made to do it one way or the other.

There certainly is no basis for me to say that we were either so politically naive or so altruistic as not to have that considered by us in terms of looking at the plan. Certainly no councilman had any reason to contemplate

that the Council Research Staff plan would in and of itself calculatedly gerrymander the existing lines to take him out of his district.

Q. But that was not a factor that was considered equally [97] along with the other factors that you previously testified to with respect to drawing the lines? A. Well, it certainly would have been considered, I think, a calculated effort to do something inconsistent without trying to follow the traditional lines and the mandate that we had from the Charter for someone to be put out of his district. I am not contending for a moment that we wouldn't have reacted to that if its—but it would have taken some sort of change inconsistent with the orderly change that was made in '61 when we were redistricted to have achieved that. It has been, of course, contended that we calculated to perpetuate ourselves in office, which I reject.

Mr. Stoner: I have no further questions of this witness.

Judge Robinson: Mr. Shurtliff.

Cross-Examination

By Mr. Shurtliff:

Q. Mr. Beer, you state that it would have taken a calculated effort to take you out of your districts in view of your desire to follow the ward lines; is that what you testified to? A. Well, I can't remember the exact words that I testified even though it was just a moment ago, but it is my feeling that everyone was pretty much in his district, and it would have taken something not consistent with the consistency [98] that we were trying to achieve to take him out, so to speak.

Q. What was that consistency? A. The consistency was to follow the general north-south lines, the general ward configurations of the City, exactly as had been the case in the '61 redistricting and, what we felt was the case here. In other words, the effort was not to do violence to what had been the general line of demarcation as far as drawing those lines were concerned.

Q. Were those ward lines followed in 1961? Were they ordained by the Charter or by ordinance or by the Constitution of the State to be followed at subsequent reapportionments or redistrictings? A. No, I don't think so. I think that it would be unfair to state that. I don't think that the Charter or any State written mandate necessarily requires that. By 1971, it was one of the provisions that was more or less set out in the Voting Rights Act of 1965, and by 1972 it was one of the provisions enacted in Bussie versus McKiethen, which we try to follow, which did say that traditional lines should be considered.

Q. How many wards are there in New Orleans? A. Seventeen, sir.

Q. What function do wards play in the Government of the parish or of this City? A. Well, traditionally they have been in—at one time [99] they were pretty much—they corresponded very much to representative districts in the City, that is, to the State legislature. They have been used in groupings to elect certain Federal and State officials. And, of course, the precinct lines are the lines just for the neighborhood voting booths. In other words, the precinct lines, which is the next subdivision down from the ward, are primarily used as a voter grouping entity.

Q. Are any officials elected from the ward or wards in the City? A. I think, sir, that some officials at one time. There is no doubt in my mind that at one time and still to a certain extent certain members of the State House of Representatives are elected specifically from wards.

Q. All right. A. Even though they are now called, say, state representative district 82 or something like that. But for years they were like the third ward.

Q. And do you know any present house district that is conterminous with a ward in the City? A. I simply have to answer in terms of the fact that I don't know, because it is not—I can't say that there are or there aren't. I can just plead complete ignorance on the question because it is something that I just don't know.

Q. Are any other officials, to your knowledge, elected [100] from the ward? A. I think the wards may still form the basis for election to the Democratic Parish Executive Committee. I am not sure of that, but I think that the Parish Democratic Executive Committee is elected and was for years. I just don't know whether it still is or not. Again, I am ignorant on the question. Certain senatorial districts, state senatorial districts essentially follow some ward lines.

Q Are those the senatorial districts set out by the Court in the Bussie case, the District Court? A. Well, actually—let me see. No, they are the ones that were set out by the Fifth Circuit. See, in that case, the District Court said one thing and then the United States Court of Appeals for the Fifth Circuit essentially returned the senatorial districts to the ward lines by a mandate down to the U.S. District Court for the Eastern District of Louisiana.

Q. How many senatorial districts are there in Orleans Parish or the City, because they are conterminous? A. I think there are eight, seven or eight.

Q. How many black senators are there? A. I don't think there are any.

Q. Are you familiar with—— A. I know there are none.

Q. Are you familiar with the population statistics for those senatorial districts? [101] A. No, I really don't know much at all about the senatorial districts. My first exposure to public office was serving on the Council of the City of New Orleans, and I don't know much about the exact senatorial districts or for that matter the state house districts.

Q. You testified that you tried to follow the court's opinion in Bussie, the District Court opinion; is that correct? A. Yes. I am not talking about the senator's case. Bussie versus McKiethen is another case, a different case.

Q. But that case also involves the senate; does it not? A. Yes.

Q. You were talking in terms of the house. A. Sir?

Q. In terms of the House of Representatives. You followed Bussie insofar as it pertained to the House of Representatives? A. We followed—I think we tried to follow Bussie just generally speaking. I don't think that anybody calculated to delineate between one case or another. But the language in Bussie was essentially what I think the charge was from Councilman Moreau to the Research Staff.

Q. How many House of Representative districts are there in the parish? A. Again, I am firing from the hip, but I would say perhaps 15, something in that range.

[102] Q. And how many, if any, of those are served by blacks? A. Excuse me. Let me just preface that by saying some of those house districts jump across parish lines. So, in other words, in some instances the guys representing part of New Orleans and a part out of New Orleans.

Q. How many of those districts are there? A. I'm not sure, I know of one.

Q. How many of those—— A. I know of one senatorial district that is like that.

Q. That goes outside the parish? A. Yes, sir.

Q. How many of the House of Representative districts are there that are represented by blacks? A. I believe about four or five.

Q. And that plan was set down by Judge West in the Bussie case? A. I believe so. I think that's correct.

Q. You stated that there are, to your knowledge, one Senate district and some House of Representative districts that go outside the parish to adjoining parishes? A. Sir, I happen to know of one Senate district because the Senator who represents the 15th Ward with which I am often much concerned happens to also represent that area below the 15th Ward going, in effect, up river, even though it is hard to see from that map that it is up river. I know that particular [103] senatorial district crosses a parish line.

Q. So, it doesn't follow the ward lines? A. Well, yes, it does, because the only ward, if I recall correctly, that he represents in the City of New Orleans is the 15th Ward.

Q. Mr. Beer, without specific reference to a map, you live generally in this area? A. Come down a little more, a little more; right around in there.

Q. And is it true that four of the other six councilmen live in an area generally like this (indicating)? A. Well, you have got to draw that line down. I happen to live in the 17th Ward about a mile and five-eighths from the lake. I have not been to the homes of—well, I have been to the home of Councilman Moreau and I have been to the old home of Councilman Lambert. I cannot locate in my mind's eye the exact location of the other members of the council, although I know generally where they live.

Q. Well, if we drew a line straight across the map east and west, from your home east—— A. Okay, yes, sir.

Q. —would there be any councilman living in the City below you? A. Yes. I think Councilman Sapir lives in B. I mean, I know he lives in B. And your line, of course, passed above [104] B. I have never been to his home and I don't know where it is.

Q. But the rest of the City Councilmen, the present incumbent councilmen, live above the line? A. I don't know where Councilman Ciaccio's house is exactly, so I can't answer under oath that that line is exactly right. But I think your point is generally correct.

Q. Councilman Ciaccio lives out in this area; is that correct (indicating)? A. Yes, sir, in that general area. I don't know if it is quite above or below that imaginary line that you drew.

Q. If someone were to draw a line starting below your home east and create a councilmanic district, could that be done? A. Sir, I suppose anything can be done in terms of powers of some court. There is a suit right now existing in the U.S. District Court for the Eastern District of Louisiana calling upon that Court to appoint a special master to draw those lines.

Q. Would that in your opinion, as you testified a moment ago, be a conscious gerrymander? A. I don't—I'm sorry, but I don't exactly understand your question.

Q. I thought you indicated when you were being examined by Mr. Stoner that in your judgment it would be a calculated effort—it would have taken a calculated effort to put councilmen in the same district in view of the fact that they were already in their own districts. [105] A. Well, I see your point, and I have to answer you this way: I think if you decided that you were going to absolutely calculate, for some purpose, whatever it was, to try to contend to somebody that we were all in a certain area, you would start out doing just about what you said you would do.

Q. Would that be a viable reapportionment plan in your opinion, sir? A. Well, it would be completely inconsistent with every previous condition from the standpoint of any sort of stare decisis or any other basis of regularity that has existed in the City since it was founded in terms of political subdivisions.

Q. That is because the political subdivisions you are talking about are wards? A. Yes, sir.

Q. And they run generally—and I appreciate there are 17 of them and some of them go differently. A. Yes, sir.

Q. But generally north to south? A. You are correct.

Q. Are you a student of history, Mr. Beer? A. I would say midland.

Q. When the City of New Orleans was first set up, did it include all of the area now encompassed by the City? A. No, sir. The City grew up pretty much in that crest down there.

[106] Q. Right in here (indicating)? A. Well, I'd say yes, sir, right, and then kind of expanded from it. But it radiated, I guess you would say, and, of course, it had the traditional dividing line of Canal Street between what we call Vieux Carre or the French Quarter and the Garden District which is sometimes referred to as the American section as opposed to the French section.

Q. The City grew generally in this direction (indicating)? A. Well, it started—I would say it kind of started going up the river before it started going to the lake very much. It went—(Mr. Shurtliff indicating on exhibit)—yes, sir. You see, there was a little community up there in A which was known as Carrolltown. Yes, sir. But come on down some to the river, keep coming down. Right in there was the little community of Carrolltown.

Then the City eventually grew in that big crescent up to Carrolltown and became known as the Crescent City, and it is pretty much in that crescent that New Orleans had its, I would say, formative development, expanding all the while out to the lake as time passed.

Q. So, as it expanded in this direction generally, did they create new wards? A. Honestly, I don't know. I can only remember as a kid that there was the 17th Ward. So, we have had 17 wards as long as I can remember.

[107] Q. But the City did start out in this general area (indicating)? A. Well, and strangely enough, also over in Algiers there is an old section of Algiers which developed about the same time that New Orleans was developing on the other side of the river, but it also serves very close to the river.

Q. So, if we were to draw a line below your home east and create a councilmanic district, it would violate, in your judgment, the tradition of wards flowing this way because it would in effect cut the top of a number of them off. A. Well, I can't exactly—yes, I would say what you have said is essentially a fair statement.

Q. Would it violate any other considerations that should go into a redistricting plan? A. Well, it would violate what we—in other words, what was handed over when we were the City Council taking office was a districting which was on the basis of those traditional lines, and we are, I suppose, seeking to pass on, in terms of fulfilling our responsibilities, something that isn't violently emasculated or violently changed in terms of feeling that part of our responsibility, I believe, is to not do this violently but to do it consistent with the historic method which has been used.

Q. But why? Why do we need to follow that historic tradition? [108] A. Well, I think I am again only speaking for myself, sir, but I think we felt that among the other considerations was the one that we sould not—that the mandate that we had was not to make a violent change in the overall configuration of the districts.

Q. Where do you derive that mandate? A. Well, I would say on the basis of consistencies.

Q. Is it written? A. No, sir.

Q. You talked about a community of interest between the Algiers or Ward 15 area and across the river in the proposed District C; is that correct? A. Yes, sir.

Q. There is in your judgment a community of interest. That interest was the bridge? A. Well, I think it's a lot more than the bridge. I think it's an identification both in terms of the continuity of the configuration and in the overall desires and goals of the people in those areas.

What you have got to understand is that in terms of that at least is that quite the contrary was the situation existing in the situation where Algiers was a part of A. There was a violent disagreement between substantial groups of people who had as their one representative on the City Council me, and this was generated because of this bridge situation which you [109] have discussed and which Mr. Stoner has discussed.

Q. You indicated also that there was a similarity in the type of homes found in this area and this area (indicating)? A. No, you are over in D now.

Q. I'm sorry. Over in this area (indicating). A. Yes, sir.

Q. And the same type of people. A. Well, I feel like that's an oversimplification that I really don't think I should say under oath that there are those of us who would say that the people in Algiers represent a distinct breed all their own. By reason of the geographic location of Algiers, there has been a build-up of feeling over there that they are in a sort of cul-de-sac in terms of being identified with the rest of the City, and that has been a gnawing

but continually existent state of mind in terms of a lot of people in that district. I think they identify a good deal more with people in C than they do in uptown A.

Q. Why is that? A. Because they want a bridge and they don't care if it goes through uptown New Orleans because it will take the pressure off the bridge they have got, from people coming into New Orleans from across the river who live in Jefferson Parish below that boundary line of the 15th Ward.

The Witness: Your Honor, may I try to show you that? I think that might be helpful.

[110] Judge Robinson: Very well.

The Witness: (At map.) This area, if it please the Court, all down here is not New Orleans. That's Jefferson Parish. But it is a hugely growing bedroom area with maybe 300,000 people in it, and there is a tremendous pressure to get across, from there across the river into New Orleans because of the employment and whatnot.

But all of that whole sweep of pressure comes right on this one bridge which Judge Robinson asked about. It is the only bridge except for one way up river here. So, people in the 15th Ward say, "Look, we have got a bridge. It's adequate. If there could just be a bridge up here somewhere to take all the pressure off these people off of us on this bridge here and let us cross into New Orleans up in here somewhere."

So, they are very much in favor of a bridge being built up in this section here, all of these people are, to take the pressure off of this bridge.

But these people say, "Look, we are in a residential area. We are quite satisfied with the fact that we are in a satisfactory, stable neighborhood. We don't want a big thoroughfare cutting across the river through our stable neighborhood to hook up with some major highways that run above the City."

So, there's been a great antagonism between what is called uptown New Orelans and Algiers, and I have had the schizophrenic job of trying to represent both entities.

[111] Judge Waddy: I am trying to understand and follow the question of how the bridge looms so largely in the determination of the districts?

The Witness: Well, Your Honor, I think it probably is being a little bit overaccentuated here. I think it looms large in the pressures of trying to put it—of trying to put Algiers back in a district where at least people were not going to be antagonistic to each other.

Judge Waddy: How does that affect the issues that are before this Court in determining whether or not the plan which has been arrived at has the purpose or effect of denying or abridging the right to vote on account of race or color?

The Witness: I don't know, Your Honor, except I think——

Judge Waddy: We are spending much time on matters that are irrelevant; aren't we?

The Witness: I think perhaps only to show that C is trying to—that the way that the Council Research Staff designed District C in the new plan was to try to take that into account and be consistent with it and didn't calculate it in any other terms.

Judge Robinson: It is my understanding, Mr. Beer, from your testimony that the matter of further bridging or not bridging the Mississippi for the benefit of people in Algiers is a matter that is vested in some state authority. There is no [112] local authority with reference to it. Is that all correct?

The Witness: I think that's an accurate statement.

Judge Robinson: So there is nothing that the Council of the City of New Orleans can do. There is nothing that the electorate of the City of New Orleans can do about it; is that correct?

The Witness: Except, Your Honor, in terms of resistance to a selected site. In other words, there is some contention by those who say that the home rule Charter gives us certain rights; that the Council does indeed have to acquiesce in a site designation made perhaps by the Governor. So that there is like a veto, which, of course, I suppose would ultimately have to be tested in Court.

Judge Robinson: But that, I take it, is or is it in anywise dependent upon or connected with the makeup of the districts by which five of the seven members of the New Orleans Council are elected?

The Witness: Well, only, Your Honor, in the sense that a district councilman charged with the responsibility of doing his best for his constituency is going to have to be responsive to their desires as to the location of a bridge.

Judge Robinson: But he would not be acting as a councilman in this regard, as I understand.

The Witness: Yes, sir, he would.

Judge Robinson: He would?

[113] The Witness: Assuming the veto power——

Judge Robinson: Very well.

The Witness: —existing in the Council, if Your Honor please.

Judge Robinson: That power is in the Council now and not in the electorate.

The Witness: It is my own belief, Your Honor, that the home rule Charter would give us a basis for resisting a unilateral determination by the Governor that the bridge would be built at a particular spot.

Judge Robinson: Very well.

By Mr. Shurtliff:

Q. Has the Council passed resolutions in respect to the location of a prospective bridge? A. Yes, sir.

Q. When did they do that? A. We have done it at various times throughout the time that I have been in office, sir.

Q. Is there at the present time a proposed bridge, conditional bridge across the river? A.Well, sir, there are proposals, yes, that still exist in terms of different groups have different contentions as to where it should be.

Q. But the powers with the authority to locate a bridge have not settled on a location? [114] A. No, sir.

Q. So, the community of interest that you talk about tying Algiers to this across the river portion of proposed District C is basically the bridge; is that correct? A. I'd say so, among others.

Q. What others? A. The discussion that you and I just had about the fact that certain areas of Algiers are pretty much similar in terms of the residencies and whatnot that is a very substantial portion of C.

Q. Are they similar in ethnic background? A. I would say that there is a fairly substantial white majority in both areas of C, the back of Algiers and the lake portion of the City; yes, sir.

Q. Well, there are other areas of the City that are separated in districts or by wards that have communities of interest; are there not? A. Yes, right; that's perfectly true.

Q. For instance, wouldn't there be a community of interest joining this area together (indicating)? A. I would say that there would certainly be a community of interest in terms of the fact that the lake fronts the whole area that you have drawn your pointer across. There are very definite differentiations in the type of housing and whatnot as you sweep across that whole area and in terms of people who [115] occupy those houses.

Judge Robinson: Mr. Shurtliff——

Mr. Shurtliff: Yes, sir.

Judge Robinson: —particularly for the benefit of the Court Reporter, would it be convenient to take a brief recess at this point?

Judge Waddy: Do you have much more cross-examination?

Mr. Shurtliff: Twenty minutes, Your Honor.

Judge Robinson: Twenty minutes more?

Mr. Shurtliff: Yes, Your Honor.

Judge Robinson: The Court will stand in recess 10 minutes.

(Whereupon, a short recess was taken.)

Judge Robinson: Mr. Shurtliff, would you indulge me for just a moment on behalf of the Court?

Mr. Shurtliff: Certainly, Your Honor.

Judge Robinson: Mr. Beer, there has been considerable mention and testimony respecting the vertical nature of the lines which divide the five voting districts.

The Witness: Yes, sir.

Judge Robinson: It is our understanding from your testimony that the lines were in the shape pretty much either as or pretty much as indicated on the smaller map that is on the board over the largest map there; is that correct?

The Witness: That's exactly correct, Your Honor. [116] Those are the lines that we are operating under right now.

Judge Robinson: When was it that you became a member of the City Council?

The Witness: I took office, Your Honor, in May of 1970.

Judge Robinson: Oh, very well.

The Witness: We were elected—if Your Honor please, we were elected from those districts in 1969 and took office in 1970.

Judge Robinson: Very well. Are you in a position to give testimony as to how long the lines dividing the five districts have run in a vertical fashion, largely in a vertical fashion; that is, largely in the north-south direction?

The Witness: Yes, Your Honor.

Judge Robinson: And for how long?

The Witness: Since the City Charter was enacted insofar as districts are concerned and, I believe, since the incorporation of the City as far as the City is concerned.

Judge Robinson: All right.

Judge Waddy: Can you tell us when that was?

The Witness: Your Honor, I can't really. I think that the old Commission Council was a creature of some enactment around 1912, and even at that time the ward boundaries of the City were essentially as they are now.

Judge Robinson: Well, the ward boundaries of the City [117] were set up in the Act of 1912; were they not?

The Witness: Yes.

Judge Robinson: Were the district boundaries set up by the same enactment?

The Witness: No, Your Honor, because we didn't go to a district form of electing representatives to the council until the home rule Charter of 1952.

Judge Robinson: And that was the first time that these five districts had existence of any sort?

The Witness: That's correct, Your Honor. I may be off on that a year or two, but that's essentially the time frame.

Judge Robinson: Do you know why the district lines were drawn in the north-south direction; why they are vertical lines instead of the districts having some other kind of configuration?

The Witness: Yes, Your Honor. That was primarily to comply with ward lines. In other words, the effort obviously was to delineate districts to include certain specific wards, and since the wards were that way, the districts emanated that way. The genesis of it, Your Honor, would be in the configuration of the ward lines, and the effort to then make districts out of wards, taking 17 wards and putting them essentially in five districts.

Up until this redistricting, if Your Honor please, [118] there never was a district that didn't comply exactly with ward boundaries. This plan is the very first plan that has ever gone even outside the ward boundaries but still trying hard to follow the general configuration.

Judge Robinson: When you say "this plan," you mean the plan, the validity of which is now before the Court?

The Witness: Yes, Your Honor; yes, sir.

Judge Robinson: Were all of the wards now existent in New Orleans in being in 1912?

The Witness: Your Honor, I just don't know. I think that perhaps they were, but I can't answer that for sure. I can say, if it please the Court, that there has been, as

long as I can remember, 17 wards with essentially the same boundary lines.

Judge Robinson: Very well.

The Witness: If Your Honor please, inside those wards, precinct lines change all the time because of the growth of the voting area, and the pressure at the polls.

So that a lot of times Precinct 17 of the 14th Ward will end up maybe being Precinct 17, 17A, 17B and 17C because that precinct has expanded in terms of people. But the ward boundaries, if Your Honor Please, have essentially stayed the same.

Judge Robinson: Very well.

Judge Waddy: Mr. Beer——

[119] The Witness: Yes, sir.

Judge Waddy: I believe you testified that in drawing the boundaries for the new districts that you attempted to follow the general ward configurations and consistent with the historic methods that had been used. Am I correct in that?

The Witness: Your Honor, I think that the actual mechanics—it is important to point out that the actual mechanics of devising the plans were left to the Council Research Staff working generally under the mandate that Your Honor has described.

Judge Waddy: Then do you know whether or not these were the considerations, the attempt to follow the general configuration in a method consistent with the history?

The Witness: Your Honor, I think it wasn't probably couched that way. I think that the general thesis upon which it was approached was to not be any more inconsistent than had been with the changes that took place following the 1960 census which do what Your Honor has described.

Judge Waddy: Well, was any consideration given to the proposition as to whether the following of that procedure would have the effect of denying or abridging the right to vote on account of race or color?

The Witness: Your Honor, I would have to answer it as best I could, which would be that it was not calculated

in any respect either to aid or to abuse any voting group. [120] Judge Waddy: Then do I understand from that that you are saying that no consideration was given to whether it would have the effect of abridging or denying the right to vote on account of race or color?

The Witness: No, Your Honor, I can't say that. Of course, I can only answer for myself on that basis, but certainly speaking for myself, I did try to take into account the points that Your Honor has made and did not calculate to abridge voting rights.

If Your Honor please, New Orleans is a salt and pepper town in a lot of respects, and there isn't any—as was said, you almost would have to hop skip around one way or the other to achieve the kind of end that Your Honor is describing.

Judge Waddy: Now, one other thing. You have given to us in Paragraph 16 of the Complaint, which has been stipulated, population statistics that existed as of the time of the first plan that the Department of Justice turned down and for the plan that is now before the Court.

The Witness: I haven't seen the pleadings, Your Honor, but I am generally familiar with them.

Judge Waddy: Do you have any population statistics for the population under the plan that exists now or the present plan?

The Witness: Oh, yes, I am sure that Research Staff has that.

[121] Judge Waddy: You can give us some of those statistics?

Mr. Stoner: Yes, sir.

Judge Waddy: All right.

Judge Robinson: Mr. Shurtliff, you may proceed.

By Mr. Shurtliff:

Q. Was is 1971, Mr. Beer, that the issue of councilmanic redistricting first arose in New Orleans? A. Yes, sir. We were cognizant that the Charter—well, I suppose when we took office we knew as soon as the '70 census figures started

coming that we had the mandate from the Charter, and I think they came in in raw form sometime in the summer of '71.

Q. What took place at that time in reference to redistricting the councilmanic districts? A. Well, as I testified, those figures were subsequently reduced by the Council. They came to us in block by block, I mean city blocks. So, it became necessary to translate that into wards and districts in order to make the determination of whether we were over or under in terms of the total number of voters in our particular districts, and I think that that was accomplished by the late winter of—late in '71 or early '72 by the Council Research Staff at the direction of the President of the Council.

Q. Were those statistics available by race at that time? A. I think they were. I think they were available by—[122] yes, I think they were.

Q. Were registration statistics by race available at that time; do you know? A. I am sure they were. The registrar of voters has an information gathering service which I am sure includes an ability to respond to those inquiries, and I am sure that that information was available.

Q. After this use of the statistics was made, what did the Council do in reference to redistricting? A. Well, if I remember the order, the chronological order it tasked, the redistricting plan that you all call Plan 1, which I voted against, sometime shortly thereafter it passed the Council ordinance which permitted—which was the enabling legislation to let a proposal go to the people which would have increased the Council from seven to nine members, and it also passed an ordinance which let go to the people at the sametime a proposal to increase the Council to 11 members. Both of those ordinances were tested by certain groups in the City in the Civil District Court for the Parish of Orleans, and both of those ordinances were deemed inoperable by Judge Federoff.

Judge Waddy: I believe this was stipulated to.

The Witness: Yes, sir. Then after that we passed other ordinances which let go to the people the question of the nine or the 11 member plan, but the Mayor vetoed the nine member proposal.

[123] By Mr. Shurtliff:

Q. Was that ordinance in the form of an either/or to the voter? A. Sir, it was two separate ordinances. One ordinance passed the Council proposing the nine-member plan and another ordinance passed the Council proposing the 11-member plan, and the Mayor vetoed the nine-member ordinance. Councilman DiRosa, Councilman Moreau, Councilman Depuy voted to override the Mayor's veto but that took two-thirds vote. So, the only thing that went to the people was the proposal either 11 or the present Council of seven.

Q. But it was your desire that both proposals go to the people—— A. Yes.

Q. —at the same time; is that correct? A. Yes. That is obvious from my vote in both instances. I voted for the ordinance to permit the nine-member Council to go to the people. I voted for the ordinance to permit the 11-Councilmen ordinance to go to the people, and I voted to override the Mayor's veto when he vetoed the nine-member proposal.

Q. In your opinion, what would have happened had both of these proposals passed by the City Council gone to the people at the same time and both been supported by a majority of the voters in the City?

[124] Mr. Stoner: I object.

The Witness: That's conjecture.

Judge Robinson: What is the relevancy?

Mr. Shurtliff: The relevancy is to show the City Council was really not trying to promote an increase in the size of the City Council.

Judge Robinson: What is the basis of your objection, Mr. Stoner?

Mr. Stoner: I object. It is highly speculative for Mr. Beer to speculate as to what would happen in a general election when there are two issues presented to the electorate at the same time.

Judge Robinson: The question of purpose is involved in this litigation. The question of good faith is involved too. The question is addressed to the weight for the answer that he will give. I will overrule the objection.

Do you have the question, Mr. Beer?

The Witness: Yes, sir, I understand the question. If I recall, at the time the Council obtained a ruling from the City Attorney's Office with respect to the validity of that type of proposal from the standpoint of it being acted upon if indeed it went to the people in that form. If I recall correctly, the consensus was that was not an unsatisfactory manner to present it to the electorate.

To answer you specifically in terms of my own feeling, [125] it certainly was not a calculated or uncalculated intention to confuse the issue but to permit the voters to act on the issue or on the issues.

By Mr. Shurtliff:

Q. Which were? A. Which were whether to increase the Council to nine members or to 11 members or to leave it as it was.

Q. But the Mayor then vetoed the 11-member—— A. No, sir, the nine-member.

Q. The nine-member A. Yes, sir.

Q. Were there public hearings held where these ordinance were passed by the City Council? A. Yes, sir, they were held in accordance with the provisions of the Voting Rights Act of 1965. We were being pretty much advised by the City Attorney's Office with respect to the general applicability of the Voting Rights Act of 1965.

Q. Were public hearings held in reference to these ordinances to increase the size of the City Council. A. Yes.

Q. Were there proposals made at those hearings other than the 7/2 plan or a 9/2 plan? A. Yes. If I remember

correctly, there was a proposal for an 11-member plan that would have no at large members.

Q. Who made that proposal; do you recall, sir? [126] A. No, sir.

Q. More than one person? A. Well, I don't know that more than one person made it, but I know that it certainly had the support of more than one person. It may have been alluded to in terms of reference as far as putting it before the City Council by one person, but I know that there were several people who were in favor of it.

Incidentally, there were plans, I would say, submitted that included contentions with respect to a nine-member plan without any councilman at large also.

Q. Were these persons that spoke in favor of an 11-member single district plan black or white; do you recall? A. They were both. For example, there are many people from Algiers who are in favor of the 11-member plan because that would give Algiers a representative on the Council just from Algiers, I would say, is predominantly a white section.

Q. Was an ordinance in those terms framed and presented to the City Council in terms of putting to the people the question of an 11-member single district plan? A. Not that I recall. I think that the—I can't recall what the number was. I am certain that it was proposed, but I doubt that one was ever actually submitted by any member of the Council. The Chater, as you know, specifically provides for two councilmen at large.

[127] Q. But they were speaking in favor of a Charter amendment; were they not? A. Yes, sir, correct.

Q. An amendment or the Charter would be amended? A. That's correct.

Q. Two ordinances did go to the electorate to determine their wishes on changing the Charter; is that not correct? A. That is entirely correct.

Q. What at that time did you do in reference to redistricting along a 5/2 plan? A. Let me make sure I understand the chronology. This is after the voters rejected both of the Charter changes that you have asked me about?

Q. Well, just for purposes of clarification, is it not true that the first plan was prepared. The question of increasing the Council to 11 went to the people after that plan was prepared. A. Yes, sir.

Q. It was defeated. A. Yes.

Q. That plan was then submitted to the Attorney General? A. I'm not sure of that chronology. I just don't know about that. That's something I simply don't know the answer to.

Q. Then it was subseqeunt to the first plan being objected to by the Attorney General that the vote went to the [128] people the second time on increasing the size of the Council; is that not correct? A. It could be, Mr. Shurtliff. I don't know that. I just can't recall that chronology.

Q. Without reference to the question of increasing the size of the City Council but directing your attention to the 5/2 districting plan, the first plan—— A. Yes, sir.

Q. —how did the Council approach that? A. Well, again, I would be just giving you my own opinion, but I think that the Council at that time thought that there would be legislation passed by them and subsequently by the people increasing the size of the Council, and I think they felt that the plan that had been submitted which split Algiers was probably not going to be viable in the sense that the size of the Council would be increased and that we would in fact eventually elect either two councilmen at large and seven district councilmen or two councilmen at large and nine district councilmen.

Q. But in fact a 5/2 districting plan was put together and passed as a final ordinance; is that not correct? A. That is correct.

Q. And did you participate in deliberations concerning the preparation of that ordinance and that plan? A. Yes.

[129] Q. Where were those discussions or deliberations held? A. Well, I think they were held—there were some

discussions in the Council chamber and some discussions with members of the Council Research Staff.

Q. During your discussions in either place, did you give to the Council Research Staff guidelines as to what they should do in the preparation of the 5/2 districting plan? A. I can't give you the exact details of those discussions with the Council Research Staff. It's been about three years and I don't want to be inaccurate. I can only say that I expressed a lack of acquiescence in it or I expressed a dissatisfaction with the splitting of Algiers into three parts, but understood that at the same time there was an effort at that time to try to respond to the 118,000 figure, and it looked like some areas did have to be split.

Q. You recall no directions to the Council Research Staff setting forth guidelines that they should follow in the preparation of the plans? A. I can't recall that there was. I can't recall from my own point that I discussed it with them in any detail.

Q. Did you discuss the plan that ultimately became the first redistricting plan adopted with other mem' ers of the City Council—— A. I am sure——

Q. —and members of the Council Research Staff in the [130] offices of the Council Research Staff approximately two weeks before adoption of that ordinance? A. I can't tell you the last part of your question yes or no, but I can say that the first part of your question, except for the two-week period which I simply can't recall, the answer is yes.

Q. I am confused by your answer. A. I'm sorry.

Judge Robinson: Why not reframe your question more specifically.

By Mr. Shurtliff:

Q. Did you attend a meeting with other members of the City Council, members of the Council Research Staff, approximately two weeks before final passage of the first plan? A. I would have to answer yes except for the two-

week time frame which I have no recollection of in terms of when we discussed it and when it was enacted.

Q. Would you describe that meeting for us? A. I don't think that I can describe it except to say that there was a meeting among members of the Council and the Council Research Staff, and the Council Research Staff had, if I recall correctly, a lot of maps with pins in them representing the figures that had been obtained from the census.

Q. And this map, was it a large map? A. I think it was probably about the size of the big [131] map there.

Q. And was it a colored map? A. I can't recall, except that I do remember it had colored pins.

Q. More than one color? A. Yes.

Q. What did those pins represent? A. Black and white registration.

Q. Registration? A. Or population. I'm not sure. It may have been both. I rather imagine that it was both. There were myriad maps prepared during all of these different —I would say the Council Research Staff probably prepared a hundred different maps for one reason or another.

Q. Did you use that map at that time in that meeting? A. I don't exactly understand your question.

Q. Was the map used by persons at this meeting?

Mr. Stoner: I object to the question, Your Honor. There has been testimony that there were many, many maps in the Council Research Staff office at the time. I think counsel should identify which map he is talking about.

Judge Robinson: Do that, Mr. Shurtliff.

By Mr. Shurtliff:

Q. Was the map that had pins on it, different colored pins representing either or both registration or voting [132] statistics, used at that meeting? A. Yes, I feel sure it was.

Q. For what purpose was it used? A. As a reference.

Q. Reference to what? A. To population, to all those things that were material to the deliberations.

Q. Will you describe the deliberations? A. I can't describe them in any great detail.

Q. Were you working on plans? A. The Research Staff had prepared a number of plans, yes.

Q. Were you examining those plans? A. Yes. One of the things that came up, I remember, in this instance as well as in other instances, it became necessary to ask Mr. Payzant, for example, about precinct populations, because there was a necessity or an effort to try to adjust in terms of the precincts inside the 15th Ward.

Q. Did you ask for those statistics yourself? A. No, I don't think I did. I think that they were asked for—I don't recall that I asked for them.

Q. Were they provided? A. As far as I can remember, they were.

Q. In what form were they provided? Population? Registration? [133] A. I would have to say that as best I can recall they were provided in both forms, black, white registration and total population.

Q. And how long did this meeting last? A. I have no idea, nor can I say under oath that there was but one meeting.

Q. For what purpose were registration statistics by race obtained during that meeting? A. I think that they were obtained to provide information to council members as to what the voting strength was. It wasn't any matter of an illegitimate inquiry as far as I can recall.

Q. This was in reference to proposed plans and plans that were being considered? A. Yes.

Q. What purpose did the voter registration statistics by race perform? A. Well, I think they performed whatever purpose anyone who asked for them intended them to perform. It is obvious that as politicians we all are,—that was one of the bits of information that made differentiating effects on different people, I suppose. We have seven distinct individuals who are members of the council, and I could not possibly presume to say what exact impact that had on any of the members of the council. For me, if it was

produced, it was another bit of information to simply be considered in conjunction with the overall situation, [134] the overall map.

Judge Robinson: Was the registration date requested by the members of the Council or was it done simply as part of the work?

The Witness: Your Honor, I believe that routinely that was—that was information developed and made available to us by the Council Research Staff.

Judge Robinson: All right. It was presented to you for what purpose? Perhaps I am repeating one of Mr. Shurtliff's questions, but I am interested in getting your answer to it. What purpose did it serve?

The Witness: Your Honor, I would have to say—I couldn't presume to say what purpose it served for anyone but me, and in terms of my own reference points, it was not a matter of particular concern to me one way or the other.

Judge Robinson: Mr. Shurtliff.

By Mr. Shurtliff:

Q. Was the same data available when you considered this second plan, the plan that is the subject of this? A. I am sure it was; yes, sir.

Q. Going back to that meeting—— A. Yes, sir.

Q. —was a result of that meeting an ordinance that was passed and contained a redistricting plan? A. Yes, sir.

[135] Q. And that was the first plan? A. Yes, sir.

Q. You indicated a moment ago in response to one of my questions that you were seven politicians and that you were interested in these kinds of matters. What other matters or factors did you consider from a political point of view in redrawing the redistricting plan? A. Sir, I cannot possibly presume to answer for anyone other than myself. In terms of my own, the charge that I felt was incumbent upon me was to participate in the redistricting discussions and to evolve a plan that would be a conscionable, workable plan. I didn't think that the first one was. I voted against it.

Q. Why didn't you think the first one was? A. Because I felt that the splitting of Algiers was inconsistent with its best interests, and as a representative of that section I felt that I should vote as I got the light to see to do it in terms of that.

Q. Well, in your discussions with other members of the City Council on redistricting plans, have you ever discussed whether or not a plan should include two or more district incumbent councilmen in the same district? A. I don't think that I have specifically discussed that, although it would be fair to say that that has certainly been a subject matter of discussion. I haven't precipitated a dis-
[136] cussion vis-a-vis that particular point, but it certainly has been a subject matter that has been discussed.

Q. Why was it discussed? A. Just as a part of the overall considerations and deliberations in this matter. It certainly would not be my purpose to state to you under oath that seven members of the City Council weren't cognizant of and at least interested in the facts as they pertain to their residences in conjunction with the overall redistricting plan. That would be a presumption, a naivete, a lack of knowledge on my part. That would be absurd. As far as anybody in this room is concerned, certainly it was something that was in one sense or another, depending on the individual concerned, a matter for them to consider and react to.

Q. Would it be a similar exhibition of naivete to say that the Councilmen did not consider the racial composition of the constituents in the proposed districts? A. Now, there I would have to say that you are talking about a matter that is distinctly within the knowledge of the individual concerned, and I will tell you that in my own particular instance it was not a matter of grave or great concern to me one way or the other.

Judge Robinson: I understood the question to be as to whether it was talked about.

The Witness: Oh, I think it was talked about, Your
[137] Honor.

By Mr. Shurtliff:

Q. Do you recall discussions about that? A. Yes, in conjunction—again, I can't say that there were discussions about that only. It was certainly a portion of the general discussions; yes, sir.

Q. Would you describe that portion of the general discussion? A. I don't think that I can accurately do that. I think I would say that it took no more or less predominance or preeminence in my recollection of them than did many other things that were discussed or than did other things that were discussed.

Q. What other things were discussed? A. Neighborhood groupings, identification of longstanding neighborhood associations in terms of a district. There was considerable concern by various district councilmen about the rapport that had been established over a period of time with certain neighborhood and civic associations that had resulted in a working situation as far as improvements in various of the districts were concerned. There was a definite regard on the part of certain of us in terms of wanting not to break up that association if it was possible, not to break it up.

Judge Waddy: Was voter registration ever discussed?

The Witness: I'm sorry.

Judge Waddy: Was voter registration among the things
[138] ever discussed?

The Witness: I think that it certainly was discussed.

Judge Waddy: In what context?

The Witness: Judge, I can't actually say what context in terms of the oath that I have taken, except to say that it was discussed and it certainly took its place in the overall subject matter of discussion.

Judge Waddy: All right.

By Mr. Shurtliff:

Q. Was it a factor in the redistricting plan that resulted? A. I cannot say that it was any more or less a factor

than the other considerations. I certainly can't say that it wasn't, that it didn't play a part in the overall deliberations as I view them. But again I am only able, as you can, I am sure, understand, to speak as only one member of the Council.

Q. But you are a member of the Council. A. Yes, sir.

Q. This is in reference to the first plan. A. This is in reference to the matter generally, to the subject matter generally.

Q. So that the same type of considerations, the same factors that you have just described would apply to the second plan; is that correct? A. I think that's a fair statement.

[139] Judge Robinson: I didn't quite get your answer. What was it?

The Witness: I say, Your Honor, I think that was a fair statement.

Judge Robinson: Thank you.

By Mr. Shurtliff:

Q. Is the reason for that, whether or not a plan should place two incumbent City Councilmen in the same district, a political reason or—why is this a factor? A. Well, I would say what you said is correct, it is a political factor.

Q. In terms of what? A. In terms of two people already on the Council running against each other for the same seat after having run for that seat in a district that didn't include that other individual.

Q. Well, is that because of personal friendship or what? A. I can't answer that specifically, personal friendship, except to say that I think in this Council the considerations that have resulted in whatever action has been taken have not very often resulted because of personal friendships.

Q. Are incumbents stronger candidates than challengers? A. That depends. I would say again that's a pretty tough question to answer. An incumbent who has been chopped up pretty good in the press isn't necessarily as

strong as a new face who, though untested, is looking fresh and sleek and slick.

[140] Would a plan that did not place two or more incumbent councilmen in the same district have more chance of passage as a practical matter by the Council than a plan that did not? A. No, no, no; the answer to that question is no.

Q. Why is that? A. Well, the obvious political consideration that would exist in that situation.

Q. What other? A. It is unlikely that anybody, however well-motivated and however altruistic he is, is not going to at least take that into consideration. So, all other things being equal, I would say that the answer to that which I have given you is the answer that I would stay by.

Q. He is going to take it into consideration in terms of his political survival or in terms of his continuing friendship with his fellow councilman? A. In terms of his—I would say more in terms of his possible reelection.

Q. What other factors or considerations went into the drawing of the plan with the thought not to have a negative impact as to the possibility of reelection? A. Sir, I can't answer you for others. Again, I can only say to you as best—in an effort to answer you as accurately as I can, that it played its part in the overall consideration just as did all of the other things that we have [141] been discussing here today.

Q. "It" being what? A. The question of pitting one incumbent against another.

Q. You said that you didn't personally consider the racial voting statistics to a great length. Is that what you have testified? A. That's not exactly what I said but that's okay, I would stand by what you said.

Q. What did you say? A. Anyway, I don't think I expressed it quite that way, but I would say that what you have said is essentially accurate.

Q. I don't want to put words in your mouth. What did you say? A. I didn't say, but I felt that it was a matter of some indifference to me.

Q. Why was that? A. Because I felt when I took office that my term of office was four years and that was all that I was thinking about in terms of serving that term of office, and whatever happened with respect to me after that was a matter that I was generally ambivalent or indifferent about as far as that is concerned. Now, that is just speaking for myself.

Q. Do you know what the population of your present District A is? A. I certainly do.

[142] Q. What is that population? A. It's about 138,450.

Q. Do you know how many registered voters there are in that district? A. I really don't. I know it's in the neighborhood of perhaps fifty some odd, sixty some odd thousand.

Q. Of the hundred and third odd thousand population, what percentage is black; do you know, sir? A. No. I know generally. I would say about somewhere between around a third to 30 per cent.

Q. Do you know what the population of Proposed District A is? A. It has to be within a few ticks of 118,000.

Q. Do you know what the percentage of blacks is in that district? A. If I recall, it was essentially the same, maybe slightly higher.

Q. In the thirties? A. Yes, sir, if I recall.

Q. Do you recall what the percentage of black registered voters is in that Proposed District A? A. No, sir, I do not know.

Q. Would it be fair to say, Councilman Beer, that one of the reasons that you didn't, from a personal point of view, have to consider the racial makeup of your constituency and the number [143] of black and white or white registered voters was that, generally speaking, it didn't really have much impact on you? A. Well, I'll have to answer you this way: The district that is proposed in this plan is exactly identical in every single categoric instance to the district that was proposed for my district in the NAACP Plan down to the last precinct, and as far as I'm

concerned, what they proposed was satisfactory as far as the district is concerned, just as this proposal is.

Q. Satisfactory to whom? A. Satisfactory insofar as I am personally concerned.

Q. Were you concerned that they were satisfied with the plan? A. I was.

Q. NAACP. A. I still am, by doing my duty as an elected official of the City of New Orleans.

Q. You stated that your district is the same as that proposed by the NAACP? A. In their proposed plan.

Q. Is District B the same? A. As I recall, it is the same.

Q. Is District C the same? A. As I recall, it is not the same. It does not include Algiers. The NAACP Plan included Algiers in District D.

Q. Is District D the same? [144] No, because of what I have just said.

Q. District E? A. Essentially the same.

Mr. Shurtliff: I have no further questions, Your Honor.

Mr. Halpin: I just have a couple of questions.

Cross-Examination

By Mr. Halpin:

Q. Mr. Beer, is it your testimony that there was no effort whatsoever on the part of yourself and other concilmen to protect themselves in the way the district lines are drawn? A. No, of course not, except that I can't accept your terminology in terms of "protect themselves." There certainly was, as I have testified in response to Mr. Shurtliff's questions, a consideration of the factors that I have responded to in answer to his questions.

Q. You indicated that in drafting this plan one of the factors that you used was to follow the guidelines against discrimination, racial discrimination in voting, particularly as set forth in the Bussie case; is that correct? A. The wording of the Bussie was was discussed in a number of instances with the councilmen and with the Council Research Staff.

Q. Are you referring to the wording of the District Court opinion written by Judge West? [145] A. Yes, sir.

Q. You are? A. That's the only written opinion as I know of. The Fifth Circuit handed down a per curiam opinion, I think announced by Judge Wisdom, which I don't believe is reported.

Q. Without stating reasons? A. Yes, sir.

Q. Now, you are aware of the language in Judge West's opinion relative to the Louisiana Legislature where he said that these traditional historical boundaries were the reason that only two black legislators had ever been elected since the Civil War and that one in fact had succeeded the other, and that it was these historical boundaries which caused this racially discriminatory effect? A. No, sir, I am not familiar with that.

Q. You are not familiar with that language of the case? A. No, sir.

Q. Are you saying then that you didn't really very carefully look into the legal guidelines against racial discrimination in drafting this plan? A. Sir, I am not contending, first, that I drafted the plan and, secondly, I am not contending anything other than what I have said in response to the various questions. How you choose to paraphrase what I have said is a matter over which I have no control. But I can't answer it any better than I have [146] in terms of what went into the deliberations as far as I can honestly recall under oath at this time.

Q. Are you aware also that the Fifth Circuit decision which you are referring to in Bussie versus McKiethen, which changed the lines in four senate districts in New Orleans, had been appealed to the United States Supreme Court, sub nom Taylor versus McKiethen? A. I heard you state that to Judge Boyle in the discussion that was held in his chambers in connection with the suit that you filed in New Orleans. I didn't know it until then.

Q. You are not aware then that that case had been remanded to the Fifth Circuit for an explanation of its redrawing of those senate lines? A. I heard you expound

in some detail on that fact also, but that was the first that I knew about that.

Q. You were not aware of that sort of guideline when this plan was being developed? A. I didn't know the facts that you reported to Judge Boyle when you reported to him.

Q. Are you aware that the plan which Judge West drew, —rather, a special master appointed by Judge West drew and approved for the Louisiana legislature in fact did not follow these vertical ward lines but rather that the legislative districts were generally compact districts rather than vertical districts? [147] A. Sir, again I would have to answer that as honestly as I can this way: I was not aware of the details that you are now reciting again until I heard you recite them in virtually the same exact language to Judge Boyle in his chambers this past week.

Q. Now, you have indicated in your testimony that you can speak only for yourself relative to the absence or existence of a racially discriminatory motive in drawing the plan. Is that your testimony? A. Sir, I feel that I can only speak for myself in terms of what went on in my own mind and what were my motivations. I certainly am an observer of people just as you are and as any other person is, and I have opinions as to what I think may have been going on in other people's minds or what may have motivated them. But I certainly can't say under oath what they are.

Q. Is it not true that in the answer filed by you and the other councilmen, which was signed in proper person, in Jackson versus Council of the City of New Orleans, No. 73-1862, United States District Court, Eastern District of Louisiana, you stated in the course of these deliberations, the Council was obliged to reject certain self-serving plans proposed by Councilman Sapir which were in the firm opinion of all the councilmen unacceptable on their face as clear efforts to gerrymander Council District B, Councilman Sapir's district, into being a district containing a white voting mayority, [148] Councilman Sapir's purpose

being to give himself a white voting majority for the sole stated purpose of his so-called political survival? A. Yes, I signed that allegation and I believe that it is stated correctly.

Q. So there is some precedent for a City Councilman deliberately attempting to create a district with a particular racial composition? A. Yes. What that allegation says is essentially what took place in connection with the deliberations that took place regarding the so-called Moreau Plan.

Q. But you would still contend that the rest of the districts in the plan under question which happen to have a white voting majority were not that way because of any purpose or design on the part of the councilmen? A. I would say that with the exception of the allegations that were made in that particular paragraph that you referred to, that the other members of the Council expressed a definite indication of a willingness to try in every way that they could to achieve a viable, valid plan, even if in some instances it meant separating themselves from areas which had traditionally been in their district and which had in past history evolved a substantial support for them from that district.

Q. You can conceive, can you not, from your statement about Mr. Sapir that a white City Councilman in New Orleans may [149] well consider it to his political advantage to have a white majority of registered voters in his district? A. Yes.

Mr. Halpin: Thank you very much.

Judge Robinson: Redirect, Mr. Stoner?

Mr. Stoner: Yes, Your Honor.

Redirect Examination

By Mr. Stoner:

Q. Mr. Beer, have you ever heard in the deliberations of the City Council or among private conversations with members of the City Council the expression "Dirty Red"? A. Yes.

Q. What is it? A. I would have to answer you in terms of a certain amount of hearsay. I was not present when that —I was not invited to the meeting where that plan was, as I understand, proposed by Councilman Sapir.

Q. What is your understanding from the conversations you have had of the expression "Dirty Red"? A. I think that the expressions that I have heard, sir, have been "Crazy Red."

Q. All right, adopting the expression "Crazy Red," what is your understanding of that expression as it deals with deliberations in or out of formal sessions of the City Council of the City of New Orleans? [150] A. Sir, I would have to answer this way: I was not invited to and generally therefore did not participate in the meeting in the course of which this proposal was, as I understand it, put forth by Councilman Sapir, so that I simply have no basis for answering you in detail except from statements which have been made to me by others.

Q. Well, isn't it true, Mr. Beer, that that expression refers to——

Judge Robinson: Just a moment.

Mr. Cotton: Objection.

Judge Robinson: Don't you have another witness? You have put this question to Mr. Beer and he has explained his inability to answer. Don't you have another witness or witnesses who can later on give you this information?

Mr. Stoner: Yes.

Judge Robinson: Let's move onto the next question, please.

By Mr. Stoner:

Q. Mr. Beer, among the members of the City Council of New Orleans, is there great camaraderie among the members? A. No.

Q. Do you ever visit in the household of other members the Council? A. I have on one occasion in the household of Councilman Lambert. I have on one occasion prior to our election in 1970, [151] in the course of campaigning,

visited in the household of Councilman Moreau. I have on one occasion invited all the members of the Council and the Mayor and the Chief Administrative Officer to my home.

Q. How often do you meet in formal sessions of the City Council? A. We usually meet on Thursdays, every Thursday.

Q. And are these public meetings? A. Yes, sir.

Q. Are they open to television and radio—— A. Very much so.

Q. —recording of your Council meetings? A. They are a fish bowl.

Q. Are they essentially harmonious meetings or is there often great differences of opinion among the members of the Council? A. There are often great differences among members of the Council.

Q. Are there times when you disagree violently on issues that come before the City Council? A. That would be a correct statement.

Q. And are there many votes in the Council that are unanimous votes on controversial issues? A. No. On routine matters of the continuation of a right to have a land bridge, a bridge over a street or that kind [152] of thing, there is a working day business unanimity in terms of trying to not impede the progress of the business that comes before the Council on those kinds of issues. On controversial issues, there are very often strong differences of opinion, heated discussions among members of the Council, and at times, though they do a very excellent job, Councilman Moreau or Councilman DiRosa as President actually have some problems in maintaining order because of the heatedness of the discussion. Although I would say it is usually on an impersonal basis, although there have been times when unfortunately it has become on a personal basis as well.

Q. Now, with respect to, well, I should refer to it as Plan No. 1, which was the early 1972 plan which was rejected by the Department of Justice, I believe you stated

that you voted against that plan; is that correct? A. Yes, sir.

Q. And your principal reason for voting against that plan was that it divided Algiers into three councilmatic districts? A. Yes, that's correct.

Q. Now, with respect to the plan which is before the Court, Plan No. 2, Exhibit 3, did you vote for that plan? A. I did.

Q. Do you know what the vote for that plan was? A. It was six to one.

Q. And do you know who was the dissenting——

[153] Judge Robinson: That's all stipulated, isn't it, Mr. Stoner? I thought it was.

Mr. Stoner: It might be, Your Honor. I didn't know whether or not the councilman who voted against the plan——

Judge Robinson: Well, I know.

Mr. Stoner: I didn't know that fact was stipulated.

Judge Robinson: I know you set it up in your Complaint or in your memorandum because I read it. I don't know whether it is embraced within the stipulation or not. How deeply are you going into it?

Mr. Stoner: I just wanted merely to ask him if he knows which councilman voted against the plan.

Judge Robinson: Would you answer that question?

The Witness: Yes. Councilman Sapir.

Judge Waddy: That's in the stipulation.

Mr. Stoner: I have no further questions.

Judge Robinson: Is there anything further?

Mr. Shurtliff: Very briefly, Your Honor.

Judge Robinson: All right, Mr. Shurtliff.

Recross-Examination

By Mr. Shurtliff:

Q. Councilman Beer, did you have a councilmanic meeting last Thursday? A. Yes, sir.

Q. Did you have strong differences of opinion on any of

[154] the subjects discussed at that meeting? A. Yes, sir.

Q. Was one of those items of discussion that evoked strong difference of opinion the question of the residency requirement for City employees? A. No. The thing that I was thinking of was the zoning matter. But there was certainly—and there was some discussion on that. There was certainly at that time a very strong discussion about whether or not the members of the police department should—and fire department—should be required to live in the Parish of Orleans, in the City of New Orleans, and there was a—the only vote that was taken on the matter, as I recall, was a vote as to whether or not it should or should not be continued. That was the only thing that went to a vote that day. There was a vote on that, and if I remember correctly, Councilman Moreau and I voted against the continuance and the other members of the Council voted to continue until another time. But that was the only vote that was taken.

Q. Is it your testimony that that matter only went to City employees and firemen or did it go to the whole of the City employees? A. You are right. It concerned them all. But the only people who were there voicing any strenuous position on it one way or the other were the representatives of the fire and police [155] departments.

Q. And were any of those persons black? A. I honestly—I remember one of the very outspoken proponents of the proposal was Mr. Carter.

Q. He was the proponent for which side of the issue? A. On the side of the issue contending that it should be restricted to residents of Orleans Parish.

Q. On what side of the issue were the representatives of the police and fire departments? A. Well, there were a lot of women there who were wives of firemen and police officers who were obviously there in favor of letting the people come to the fire and police departments from outside the parish. I did not at that time hear, though there were some of them present, any of the senior police officers

of the City, and I do not know what their specific position was on the matter.

Q. Were there any persons there that spoke in favor of doing away with the residency requirement, black? A. I cannot recall, but I think that there probably were not. I think that—in fact, the contention was made by Mr. Carter to do away with the requirement was unacceptable to the black people that he stated he was speaking in behalf of, although he does in fact hold employment with the City of New Orleans, which is color blind.

Q. What position does he hold? [156] A. I don't know exactly what he is. I know it is a rather well-paying job because I remember some reference to his salary by someone who was discussing the matter after he spoke.

Q. Was this debate in reference to a resolution offered by President—Councilman DiRosa? A. If I remember correctly, sir, it took its place on the agenda by motion with Councilman DiRosa's name as the leading proponent or author.

Q. Councilman DiRosa is an at large councilman; is he not? A. That is correct.

Q. Did you hear during the discussion of that resolution Councilman Moreau state that he would introduce legislation in an ordinance form doing away with the residency requirement? A. If I recall, there was some statement generally to that effect. I can't say that it was couched in exactly those terms, but I think you have stated it as accurately as I recall it.

Q. Is Councilman Moreau an at large councilman? A. Yes, sir.

Q. Did any councilman speak in opposition to the removal of the residency requirement? A. I think that both Councilmen Ciaccio and I were interested in hearing some discussion about it from an overall standpoint, but I don't remember any—I honestly can't tell [157] you the details of—it is just one of a very substantial number of matters that came before us that doesn't single itself out so that I can honestly report to you the details of my recollection of it.

Q. Do you also recall at that Council meeting of last Thursday a discussion on a street matter? A. I remember towards the end of the meeting some discussion with respect to a——

Mr. Stoner: Your Honor, I am going to object to this——

Judge Robinson: What is the purpose of it?

Mr. Stoner: —the continuation of this further line of testimony. I have been very liberal on allowing him to get into this, but I don't understand what this is, and I might say——

Judge Robinson: Just a moment. Let him make his proffer.

What is it, Mr. Shurtliff?

Mr. Shurtliff: One of the contentions is that the black vote is diluted. One of the reasons for that dilution is the unresponsiveness of the City Council to the needs and desires of black persons in their City.

Judge Robinson: All right.

Mr. Stoner?

Mr. Stoner: Well, I think this is irrelevant in that [158] the issue arose because both Mr. Shurtliff and I apparently were in New Orleans last week in connection with the depositions, and the investigation——

Judge Robinson: I think it is within the issues of the case, but we may limit you on your probe. For the time being, you may continue. The objection is overruled.

By Mr. Shurtliff:

Q. Was there a discussion on a street matter, sir? A. Sir, as I recall, there was a discussion which had as its genesis a question by Councilman Lambert to a representative of the Department of Streets with respect to the asphalting of certain streets and whether or not that asphalt should go from curb to curb or on the street line, and I can't remember the exact details of that either.

Q. Was Councilman Lambert offering a resolution or a proposed ordinance? A. I think we had gotten down to the point where it would—I remember when you came into

the council chamber and I remember it probably being late enough on the agenda so that it probably would have been in a resolution and not in an ordinance. I think we were down to resolutions at that point.

Q. While he was speaking to that resolution, do you recall Councilman Lambert saying that the worst streets in the City are in the poor neighborhoods? A. I remember him making some reference to it, and I [159] think at the same time, if I recall correctly, he said black and white. Now, that is my recollection, when he put the question to the Street Department with respect to the problem of this asphalt program.

Q. Would the passage of Councilman Lambert's resolution have resulted in the expenditure of additional moneys by the City? A. Well, I have got to answer you this way: I don't recall that—I don't think that a resolution—just as a practical matter, a resolution carries with it no actual implementation. That's done by ordinance or by motion and order in our Council proceedings. I will say that the tremendous bulk of paving in the City of New Orleans during the entire time that I have been on the Council has been almost, well, certainly predominantly in black areas and probably almost exclusively.

Q. In black areas? A. Yes, sir.

Q. Is there a reason for that? A. One of the reasons has been the substantial use of Federal programs, and the other has been a joint City meeting of those or matching of those Federal funds in certain target areas. There is no doubt about the fact that there are areas in New Orleans which are black which are in greater need of improvement just as there are white areas. But it certainly is not inconsistent to say that there are areas throughout the City [160] black and white, that need paving. We need, I would say, about $300 million of capital improvements in that respect.

Q. Do you recall what the vote was on Councilman Lambert's resolution? A. I recall that it failed. I think the reason, if I may say, is a technical one in the sense

it was obviously one of those things that needed to be discussed further with the Street Department so that some action can be taken more consistent with the technical problems that existed in that particular matter.

Mr. Shurtliff: Thank you, Mr. Beer.

Judge Robinson: Gentlemen, are you all finished with Mr. Beer?

Mr. Beer, I have just a couple of questions about two groups——

The Witness: Yes, Your Honor.

Judge Robinson: —lending, as I understand, assistance to the Council, certainly with reference to the second redistricting plan, the one that is before the Court now, and perhaps also with reference to the first.

The Witness: Yes, sir.

Judge Robinson: There is mentioned in the complaint an entity called the Council Research Department.

The Witness: Yes, sir.

Judge Robinson: Would you tell me what that is.

[161] The Witness: Yes, I will try to, Your Honor.

Judge Robinson: All right.

The Witness: The Council Research Department is headed by a Mr. Jim Payzant who carries the title of Director of the Council Research Staff, and under his direction, Your Honor, are a group of, I would say perhaps eight or so, individuals who have varying duties.

Judge Robinson: Are these City employees?

The Witness: Yes, Your Honor, they are Civil Service employees all, and a substantial number of them are lettered in the sense that they are college graduates and do work as, I would say, legislative research analysts in terms of providing members of the Council with information, drafting ordinances, resolutions, et cetera, at the various directions of members of the Council. They are responsible to all members of the Council, but their daily duties are pretty much set out by the Director, Mr. Payzant.

Judge Robinson: Very well. Am I correct in my understanding that the Council Research Department was given

the responsibility and indeed it performed the responsibility of formulating the redistricting plan that is now before the Court?

The Witness: Your Honor——

Judge Robinson: I mean, the plan that became the one that is before the Court.

The Witness: Yes, sir, Your Honor. I would say that [162] the answer to that is yes, this was at the direction of and subsequently that ordinance was introduced by Councilman Moreau who was, I think, President of the Council when the original direction was given.

Judge Robinson: Now, am I correct also in my understanding that the Council, when it adopted this plan, adopted the plan just as it was submitted to the Council by the Council Research Study?

The Witness: No, Your Honor, I don't think that is entirely correct. I think that there was some rather minor but nevertheless some changes in it. I don't think that they—it would certainly be fair in response to Your Honor's question to say generally speaking that was correct, but I believe that there was some minor adjustments in terms of the actual numbers. The numbers weren't quite right in terms of the 118,000. There were some minor precinct line adjustments.

Judge Robinson: Anything other than that that you can recall?

The Witness: No, Your Honor. I would say essentially it passed as Your Honor stated.

Judge Robinson: Now, Mr. Beer, mention has also been made of an organization described as an independent nonpolitical research organization known as the Bureau of Governmental Research. Can you tell me about that?

The Witness: Yes, Your Honor. I served at one time [163] as a member of the board and as a member of the Executive Committee and as an officer of that agency but resigned before I ran for public office.

The Bureau of Governmental Research is a non-profit business and general public supported group which concerns itself with matters of importance to the municipal area or to the metropolitan area of New Orleans, and it has been, I think, chartered as a non-profit corporation for perhaps 25 years.

Judge Robinson: Is my understanding correct that the Bureau of Governmental Research was lending assistance to the Council Research Department in the formulation of this plan?

The Witness: Your Honor, the Bureau maintains a staff of its own. It has an Executive Director who is a paid employee, and he has a staff. If I recall correctly, there were, as there have been on other city issues, submissions by the Bureau of Governmental Research to the Council and to the Council Research Staff embodying suggestions on their part.

Judge Robinson: Do you know just precisely what role, if any, the Bureau of Governmental Research played by and through the Council Research Department insofar as the fashioning of the redistricting plan before the Court is concerned?

The Witness: Your Honor, I don't think I could say that I know the part in the sense that I was not privy to, say, the staff work between the two agencies; that is, the Director of the Bureau—the paid director of the Bureau of Governmental [164] Research and the Director of the Council Research Staff. I know how they rapport. But I was not specifically privy to the discussions they may have had.

Judge Robinson: Very well. Is there any black representation, Mr. Beer, on the Council in the Council Research Department, any blacks at all?

The Witness: I believe so, Your Honor. I am not sure of the number of employees.

Judge Robinson: Can you tell us how many?

The Witness: Your Honor,——

Judge Robinson: You can give an estimate. I understand you have said you don't know exactly.

The Witness: I would have to guess, Your Honor. There are probably two or three——

Judge Robinson: All right.

The Witness: —I think, city-wide.

Judge Robinson: Of what total number?

The Witness: Out of perhaps seven or eight.

Judge Robinson: Now, tell me about the Bureau of Governmental Research. Is there any black representation there?

The Witness: Your Honor, I can't answer that as of now. At the time I served on the board there were.

Judge Robinson: My final question, Mr. Beer, is this: You made reference to maps of New Orleans——

The Witness: Yes, sir.

[165] Judge Robinson: —containing various colored pins——

The Witness: Yes, sir.

Judge Robinson: —some of which did represent or you thought may have represented population statistics and others which you thought did or may have represented voter registration statistics.

The Witness: Your Honor, I don't have any doubt about it. I would not want the Court to think that I have doubt about it. I can't recall in which instance one was used and in which instance another was used. But there is no doubt in my mind but that those factors were represented by the pins.

Judge Robinson: Thank you very much. Now, these maps were presented to the Council by, was it, the Council Research Department?

The Witness: Yes, sir. And I think, Your Honor, that the Council Research people may have responded to various other inquiries that would have evolved various other responses. In other words, I can't recall but I rather imagine that over the time span of these discussions, there were

other types of mathematical data that were requested by different members of the Council.

Judge Robinson: Very well, Mr. Beer.

(Whereupon, the Court confers.)

Judge Robinson: Gentlemen, I suppose this finishes [166] the testimony of Mr. Beer. May he be excused or as a party do you expect him to remain through this hearing?

The Witness: Your Honor, I have some time problems. It may be that tomorrow——

Judge Robinson: It is quite all right, so long as Mr. Beer is excused.

Mr. Stoner: From the plaintiffs' standpoint, yes, sir.

Mr. Shurtliff: We have no objection.

Mr. Halpin: No objection.

Judge Robinson: You are free to leave at any time, Mr. Beer. Thank you very much.

Gentlemen, the Court had planed to adjourn at five this afternoon. We can continue until then. I don't know whether your next witness, however, Mr. Stoner, is a long witness or a short witness.

Mr. Stoner: He would be a long witness.

Judge Robinson: Would there be any advantage to be gained by starting with the witness at this time or would you prefer that we take the adjournment now and resume at 10:00 o'clock tomorrow morning?

Mr. Stoner: Well, his testimony will be long. He is an important witness. He is the Director of the Planning Staff and it would probably——

Judge Robinson: Had I known or remembered I could [167] have saved a few questions of Mr. Beer.

Mr. Stoner: I believe in 10 minutes we could get very little, perhaps just his introduction.

Judge Waddy: I would like to remind counsel that according to their representations to the Court at the beginning that this case would be concluded in two days and that the witnesses would be relatively short, along with the fact

that this Court has alloted only two days for the hearing. If counsel will keep that in mind for tomorrow.

Judge Robinson: Gentlemen, isn't it obvious at this point that the presentation of this case cannot possibly be completed on tomorrow? I have put that question to you. That's the way it seems to me.

Mr. Shurtliff: I would say that it appears that way to me, Your Honor.

Judge Robinson: Mr. Stoner?

Mr. Stoner: I must admit the testimony of Mr. Beer, I thought we would have concluded that in about an hour.

Judge Robinson: Very well. Did you have anything you would like to say about this, Mr. Halpin?

Mr. Halpin: It is obvious that it is going longer.

Judge Robinson: Now, the next question I would like to put to counsel—and you understand the purpose of putting these questions is not by way of complaint by the Court. This is an important case and we recognize that importance and we [168] recognize and respect the efforts counsel made today to expedite the case. But just owing to the nature of the case, this is going to be a long trial. Wouldn't you gentlemen concur in that estimate?

And the reason that I am raising the question at this time, and the reason for Judge Waddy's earlier question, is that the Court does have a problem, as I indicated to you earlier today, with the case not being completed on tomorrow as to when it will be able to resume this trial and to carve out enough time to enable us, the next time we assemble for the purpose of this trial, to be able to finish it.

Now, I don't know how you gentlemen feel, but the thought had been running through my mind that we would continue until the end of the day on tomorrow, and unless something happened to upset the view that I have of the case here now, we would resume—we had better figure on having one week to get this trial completed.

Mr. Stoner?

Mr. Stoner: I might say that Mr. Treese, my partner and I, had discussed the ways of expediting the testimony of our witnesses, and we had felt that the testimony of Mr. Payzant, the Director of the Council Research Staff, can be narrowed, and I would not think that anything close to that amount of time would be required.

Judge Robinson: Well, you have how many more witnesses?

[169] Mr. Stoner: We had three other witnesses. Although——

Judge Waddy: Your estimate was that you had five witnesses.

Mr. Stoner: Testimony that did develop here today may necessitate the calling of one of the other councilmen.

Judge Waddy: You may have, in other words, a maximum of four more witnesses.

Mr. Stoner: That would be our thinking. There is another witness from the Planning Staff who is here specifically at the request of the Government. We did not intend to offer him because he had very limited mechanical aspects of devising the plan.

Judge Robinson: All right. And Mr. Shurtliff, let's go back to what you said this morning. You have approximately the same number of witnesses for the defendants; is that correct?

Mr. Shurtliff: We do, Your Honor. There is no reason why you should have faith in me as a prognosticator——

Judge Robinson: I didn't hear you.

Mr. Shurtliff: There is no reason why you should have faith in me as a prognosticator, but I would seriously believe that our witnesses would be considerably shorter in duration than was Mr. Beer today. I would join with Mr. Stoner in that I really don't believe it would take us another week; [170] possibly tomorrow and two more days, at the rate we seem to be going.

Judge Waddy: We also have to consider the facts, Mr. Shurtliff, that Mr. Stoner might want to cross-examine

your witnesses as long as you have cross-examined his. So that we cannot overlook that situation.

Judge Robinson: Gentlemen, we want to give the case the consideration it is due, and it seems to me we will just have to be realistic in terms of what the time demands of this litigation may be.

Mr. Halpin, you have, I seem to recall from this morning, one witness?

Mr. Halpin: I indicated only one, and it is possible as the case evolves, it won't even be necessary to call that one. So, we shouldn't count on us putting on anyone, you know, for any length of time.

Judge Robinson: Well, the Court, as I have said before, will fulfill its commitment, will go through tomorrow, which was the amount of time counsel thought that they would need and which the Court arranged to give. Beyond that, as I have indicated, we have a terrible problem with reference to reassembling to give this case a substantial amount of time for the resumption of the presentation of the evidence.

Perhaps a determination can be made better at some point on tomorrow as to what the time demands would be. [171] Obviously, the more additional time the trial will take, the greater the Court's problem is in terms of getting back to this for purposes of an early completion.

The Court feels that it will need a transcript of the testimony given during these proceedings, and I dare say that counsel have the same feeling. Is that correct? It might be well for you gentlemen to make your arrangements with the Court Reporter as soon as may be convenient.

Is there anything else that can be profitably undertaken at this point?

If not, Mr. Marshal, the Court will stand in recess until 10:00 o'clock tomorrow morning.

(Whereupon, at 4:58 o'clock p. m., hearing in the above-entitled matter was adjourned to reconvene at 10:00 o'clock a. m., Friday, August 9, 1973.)

[172] IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1495-73

PETER H. BEER, ET AL., *Plaintiffs,*

vs.

UNITED STATES OF AMERICA, ET AL., *Defendants.*

Friday, August 10, 1973
Washington, D.C.

Trial in the above-entitled matter was resumed at 10:00 a.m. before a 3-Judge Panel, consisting of THE HONORABLE SPOTTSWOOD W. ROBINSON, United States Court of Appeals. Presiding, THE HONORABLE HOWARD F. CORCORAN, United States District Judge; THE HONORABLE JOSEPH C. WADDY, United States District Judge.

Appearances:

On behalf of the plaintiffs:

JAMES R. STONER, Esquire
JAMES R. TREESE, Esquire
BLAKE C. ARATA, Esquire
EARNEST L. SALATICH, Esquire

On behalf of the defendants:
M. KARL SHURTLIFF, Esquire
WALTER KORMAN, Esquire
NATHANIEL FRIENDS, Esquire

On behalf of the intervenors:

STANLEY A. HALPIN, Esquire
CHARLES E. WILLIAMS, III, Esquire
CHARLES E. COTTON, Esquire.

* * * * * * * * * *

[175] PROCEEDINGS

(This three-Judge Court convened at 10:00 a.m.)

Deputy Clerk: Civil Action 1495-73, the case of Peter H. Beer, et al versus United States of America, et al; Mr. Stoner, Mr. Treese, Mr. Arata, Mr. Salatich for the plaintiffs; Mr. Shurtliff, Mr. Gorman, Mr. Friends for the defendants; Mr. Halpin, Mr. Williams, and Mr. Cotton for the intervenors.

Judge Robinson: Are counsel ready to resume?

Mr. Stoner: Ready, Your Honor.

Judge Robinson: You may call your next witness.

Mr. Stoner: Plaintiffs will call as our next witness, Mr. James Pezant, and Mr. Treese will do the questioning.

Judge Robinson: Very well.

Whereupon,

James N. Pezant

took the stand, and being duly sworn, was examined and testified as follows:

Mr. Treese: May it please the Court——

Judge Robinson: Mr. Treese.

Direct Examination

By Mr. Treese:

Q. Sir, would you please tell us your name and residence? [176] A. My name is James Pezant (spelling out) P-e-z-a-n-t. I reside at 4727 Sierra Madre Drive (spelling out) S-i-e-r-r-a M-a-d-r-e D-r-i-v-e, New Orleans, 70127.

Q. What is your occupation, sir? A. I am the City Council Staff Director of the New Orleans City Council.

Q. I wonder if you could describe that position for us? A. Yes sir, I am the executive officer of the City Council and I head a research staff that studies fiscal, legislative, and administrative matters, or for that matter, any of the official business for the city government. I prepare reports, research activities of the city government and quite often prepare legislation in the form of ordinances, motions, resolutions.

Q. Now Mr. Pezant, you have used the pronoun "I," does that also include your staff? A. Yes, sir.

Q. At your direction? A. Under my direction, yes sir.

Q. I see. How long have you held this position? A. I have held the position of Director since January of 1961.

Q. Would you tell the Court please, what your educational achievements have been? [177] A. I am a graduate of Tulane University in 1951; I have a masters degree in political science from Louisiana State University in New Orleans, and at present I am a candidate for a Doctorate of Philosophy in Political Science at Louisiana State University in New Orleans.

Q. How many members do you have on your staff, Mr. Pezant? A. Sir, I have an entire staff of about eighteen employees. The research staff consists of five other professional employees besides myself and three clerical employees.

Q. Would you describe the relationship of your position and your staff at the City Council of the City of New Orleans? A. Well sir, our staff is what we call a career staff in city government. We are all appointed through the City Civil Service System—and our working relationship, did you say?

Q. Yes. A. The members of the City Council, sometimes individually, sometimes collectively, give us various assignments to prepare legislation, to study that legislation before it gets prepared, to prepare resolutions, motions, to study some activities of city government, and to present information. It's a tremendous process of giving seven members of the City Council adequate information upon which they will take some [178] future course of action, either legislatively or otherwise.

Q. Now in the conduct of your duties, do you perform in any way for the Mayor of the City of New Orleans? A. No, no sir, I have no responsibilities to the Mayor of the City of New Orleans.

Q. You and your staff perform solely for the Council? A. Yes.

Q. Are you, or your staff, or both members of the Civil Service of the City of New Orleans? A. Yes sir, every member of my staff is recruited and appointed through the City Civil Service System.

Q. All right. Who administers this Civil Service System in the City of New Orleans? A. There is a commission which is established by constitutional law, state constitutional law that administers a three-member commission that has a staff, a civil service staff, that administers the laws and procedures of the Civil Service System.

Judge Waddy: Are you appointed under the System, or do you take examinations in a competitive fashion for these positions?

Witness: Every member takes a competitive examination. I have taken both the written and oral examinations by board and the City Council got a list back in 1961 of the names of the persons, the persons in the order that they [179] finished, and they have the option of selecting one of the top three names, and I was appointed in that manner.

By Mr. Treese:

Q. Is that comparable to the way other members of your staff are selected? A. Yes sir, it's called the "Choice of Three." On any civil service position under that law, the appointing authority has the option of appointing one of the top three persons who are willing and able to accept employment.

Q. Now Mr. Pezant, does your office in any way deal with constituent problems in the City of New Orleans? A. Yes sir, we deal with a lot of constituents.

Q. When there are inquiries or complaints, or any form of direction to a member of the City Council from a constituent, is it then passed on to your staff? A. Yes sir. I don't know if a hundred precent of constituent problems are passed on, but literally scores of constituents are referred to my office by various councilmen to assist them

in problems that they have with various agencies of government, not limited to city government.

For example, a lot of citizens have problems dealing with the paperwork and the bureaucratic procedures related to the State Welfare Department, to the City Welfare Department, with respect to other agencies of city government, and we assist them with the understanding of the law, how to [180] proceed; we write letters on their behalf asking that they be given full consideration, etcetera.

Q. In the course of your activities within your staff and your duties as a Director, do you have occasion to seek legal advice from time to time? A. To seek legal advice from the City Council?

Q. From the City Attorney's Office? A. Yes sir, quite frequently.

Q. All right. Now did there come a time, Mr. Pezant, when you were called upon to involve you and your staff in the redistricting problems of the City of New Orleans? A. Yes sir.

Q. When was that? A. To the best of my memory, sir, in late 1970, or early 1971.

Q. Would you tell the Court please, how did that originate, how did you get the first inquiry about this subject? A. Well, in late 1970, or early 1971, Councilman Moreau asked my staff—it could have been by memorandum, it could have been verbally, I am not certain—asked our staff to start doing the necessary work to assist the City Council in its responsibility to redistrict the city, the five City Council districts, in accordance with the requirements of the New Orleans City Charter.

[181] We undertook to obtain the necessary information from the 1970 Decennial Census. We spent many, many weeks transcribing and de-coding—I guess you could call it—the information as it was sent down from the Bureau of Census.

Q. Who were the persons primarily responsible for that original legwork, that business of de-coding as you describe

it? A. Well sir, in early '71, I assigned to Mr. James Brannock who was then under the employ of my office, the responsibility for getting this information and preparing conceptual plans based on this information for the redistricting efforts. However, we did not receive what, I believe, are commonly referred to as the third-count tapes.

Judge Robinson: The what?

Witness: The third-count tapes of the Bureau of Census.

Judge Robinson: What are they?

Witness: The third-count tapes, Your Honor, gave us the information of the population of the City of New Orleans on a block-by-block basis, with a few exceptions, in order that we could correlate the population of the voting precincts of the City of New Orleans.

The first-round tapes which were received earlier only gave the popualtion of the city wards, these very large units, and that was not—we could not redistrict, [182] or we could not correlate that information with the voting precincts, or with small units, or with small neighborhood units. In other words, the first-count tape was a count in a very large form of the city population, and the third-count tapes, to the best of my knowledge, arrived in my office on either September or October 1971.

By Mr. Treese:

Q. Are you telling the Court that the third-count tapes were the final bits of information to be received from the Census Bureau in order for you to have all the information you needed to begin your project? A. Yes sir. I advised the President of the Council in 1971, Mr. Di Rosa, was President at that time, that we should seek a legal determination from the City Attorney's Office as to when the information was available to us in the manner in which it could be used for redistricting the city.

The reason for my advising that inquiry was that the City Charter of New Orleans required the City Council to redistrict itself after each Decennial Census within six months of receiving the necessary information from the

Bureau of Census. This was an important legal requirement.

Q. So at that point when you received the third—what do you call it, the third—— A. Third-count tapes.

Q. —the third-count tapes, you and your staff [183] proceeded——

Judge Waddy: Are you saying count?

Witness: Yes sir (spelling out) c-o-u-n-t, third-count.

Judge Waddy: All right.

By Mr. Treese:

Q. —you and your staff proceeded to draw up these conceptual plans, is that correct? A. We had drawn up conceptual plans prior to that, Mr. Treese——

Q. All right. A. —but those plans generally outlined what we thought were concepts of how the city could be redistricted based upon a further refinement of the information when it came in third-count tapes.

Q. What factors did you have in mind when you were arriving at these conceptual plans? A. The total population which is a requirement of the City Charter; I believe the City Charter states that the five districts should be as nearly equal as possible in population. We also took into consideration the natural boundaries of the City of New Orleans and historic boundaries of the City of New Orleans, and we also were mindful of the fact—we received some instructions from the City Attorney's Office, Mr. Earnest Salatich conveyed those to me—he digested the [184] regulations of—I don't know whether I should call them regulations—he digested some information from the U.S. Attorney General's Office, stating what they expected in the redistricting plan. And we also—In that plan, we also were mindful of the fact that in any redistricting plan there must not be an effort to dilute the voting strength, I believe it is, of minorities or black groups.

Q. Now did these conceptual plans that were developed out of the energies of you and your staff take any physical form? Did you have maps? A. Yes sir, we had about

nine small maps upon which we drew proposed boundaries for the five new districts and we used, maybe, colored differentiations, like green for one district, or orange for another, and we put those, and so forth, and we put those maps on a wall there in our working offices.

Q. Did these maps include detailed information pertaining to race within certain districts? A. No sir.

Q. Did they include detailed information pertaining to population within districts? A. No sir, not detailed information.

Q. You said you put them in your office, was that in your personal office? A. No sir, not in my personal office. We put them [185] in the offices where all the members of my research staff physically were.

Q. Who had access to these plans as they were being developed? A. Members of the City Council.

Q. Did they, in fact, visit that office and review those plans? A. Yes sir.

Q. All members of the Council? A. I am not certain that all members of the Council. To the best of my knowledge, all members of the Council did visit my office and review those plans.

Q. Did you personally receive any inquiries from the members of the Council during this period of time regarding these proposals? A. Inquiries involving these proposals?

Q. Yes, questions that they might have regarding boundary lines, population, registration, anything of that nature. Did you have any kind of communication with members of the City Council regarding the development of these plans? A. Yes sir, councilmen inquired about population figures, but the only thing we could tell them was the information—Mr. Eckert of my staff is better qualified to respond to this, but to the best of my knowledge, we had ward population figures and we drew the lines based upon our [186] estimates of what the population of these proposed districts would be, but we could not be certain (repeating)

we could not be certain of the accuracy of the population until we received the so-called third-count tapes.

Mr. Treese: For the information of the Court and counsel, our next witness will be Mr. Eckert, who will get into this detailed information.

Judge Robinson: Very well.

By Mr. Treese:

Q. No, Mr. Pezant, out of these conceptual plans and the discussions between you, your staff, counsel and any other interested persons, did there, in fact, develop a fixed plan to be presented to the Council? A. Yes, Councilman Moreau asked us to prepare an ordinance based upon one of the concepts that he had reviewed in the office, and we proceeded to prepare an ordinance after we received the third-count tapes. I believe the third-count tapes came down in the fall of '71, and the ordinances would have been prepared in early 1972, to the best of my knowledge, perhaps January.

Q. All right, did you then turn over the proposed ordinance and map to Councilman Moreau? A. Yes sir. Councilman Moreau introduced the ordinance by initialing the same.

Q. All right, at that time did you, your staff, or [187] the Council, to your knowledge, receive any other proposed plans from sources outside the Council staff? A. Prior to the public hearing?

Q. Prior to the submission of the ordinance, proposed ordinance, by Councilman Moreau? A. The only other plans that were received prior to that, sir, were, perhaps in late 1970, or early 1971, the Bureau of Governmental Research sent the Council some proposed plans, but I don't recall those in detail and the problems connected with those plans were that they did not have the information—the third-count information that would give the accurate population or voter registration, or anything else.

Q. You have mentioned the Bureau of Governmental Research; I wonder if you could describe that organization

and the contacts that you and your staff had with them during this period? A. The Bureau of Governmental Research, as I understand it, sir, is that it is a private corporation, a private corporation. It is made up of a number of businessmen and civic-minded people in the City of New Orleans and for many years, they have undertaken to study various aspects of city government and have other governmental agencies in the City of New Orleans and have rendered reports and recommendations to those respective agencies for improvement of [188] their operations, and they regularly review bond issues, proposed bond issues of city government to explain to the public what these bond issues entail. They also evaluate proposed constitutional amendments to the Constitution of Louisiana which must be submitted to the people, and they evaluate—they are really an information agency which has no conection with government, but is privately funded and they have a small professional staff which is responsible only to that Bureau.

Q. Did they assist you in the preparation——? A. We have had a lot of exchange, but not in preparing plans for the City Council. But we have had a lot of exchange with the staff of the Bureau of Governmental Research in checking the census tapes, making corrections where necessary, correlating that information, transcribing it from the census blocks to the actual voting precincts of the City of New Orleans. We had a lot of—we did a lot of legwork; in other words, with the staff of the Bureau of Governmental Research.

Q. Let me ask you about the plan that—or the ordinance that was introduced by Congressman, or Councilman Moreau. Did that ordinance that was introduced by Councilman Moreau ultimately result in passage by the Council? A. The ordinance was passed by the City Council, but it was amended before it was passed.

[189] Q. All right. What became then of the plan that was passed by the City Council? And by the way, we refer to this as the first plan as we have in our complaint. A. That plan or ordinance was submitted to the United

States Attorney General early in 1972; it could have been either February or March. The record would show that, of course.

Deputy Clerk: Plaintiffs' Exhibit Number 12 marked for identification.

(Plaintiffs' Exhibit Number 12 was so marked for identification)

By Mr. Treese:

Q. Mr. Pezant, there has now been displayed before the Court for identification, Plaintiffs' Exhibit Number 12, which for the information of the Court, again, has been stipulated to by counsel for the Government and counsel for the plaintiffs (indicating document to witness). Do you recognize that plan? A. (Examining the document) Well, sir, the one on the right looks like the original ordinance.

Q. I am speaking now of this one (indicating)? A. Oh, that would be the ordinance as it was finally passed. Yes sir.

Q. All right. Let me stop you for a minute, Mr. Pezant, and ask you about the passage of this ordinance.

Were there public hearings surrounding this [190] consideration by the City Council? A. Yes sir, there were public hearings, to the best of my knowledge, there were three, at last two, and they had three public hearings, and one of them was conducted at night, to the best of my knowledge, to give people who work during the day an opportunity to come down and express their views on the proposed ordinance.

Q. Was there notice of these hearings submitted to the public? A. Yes sir. The City Council is required by the City Charter to advertise all ordinances in the *Official Journal* of the City of New Orleans which happens to be one of the local newspapers, which meets the requirement, I believe, of 50,000 issues a day. But in addition to that, my recollection is that the Clerk of the Council published a special ad, in addition to the requirements of the law, published a special ad notifying—stating—a block ad, I believe it was, like you would purchase a regular commercial ad, advertising the dates and the time of the public hearings and the purpose of those hearings.

And in addition to that, sir, to the best of my knowledge, the local newspaper representatives who attend all of the Council meetings gave quite a bit of—gave notice in their reports of the proposed public hearings.

Q. Did you attend the hearings? [191] A. Yes sir.

Q. Do you know whether the hearings were transcribed? A. Yes sir, those hearings were transcribed.

Deputy Clerk: Plaintiffs' Exhibits 13 and 14 are marked for identification.

(Plaintiffs' Exhibits Numbers 13 and 14 were so marked for identification)

By Mr. Treese:

Q. Mr. Pezant, I ask you to look at those documents (indicating), and ask you whether they represent the transcription of the hearings surrounding the first plan—may it please the Court, we have also stipulated with Government counsel as to the introduction of these transcripts of those first hearings.

Judge Robinson: Very well. Did you want to put them in evidence now?

Mr. Treese: Yes, I will.

Judge Robinson: It would be 12, 13 and 14?

Mr. Treese: That's correct.

Judge Robinson: They will be received.

(Plaintiffs' Exhibit Numbers 12, 13 and 14 were so received in evidence)

Witness: (Examining the documents) Yes sir, [192] these are the transcripts of the public hearings.

Judge Robinson: Since you are already somewhat interrupted, may I take advantage of the opportunity to put just one question to the witness?

Mr. Treese: Certainly.

Judge Robinson: On the board, Mr. Pezant, there are two smaller maps. The one on the left is Exhibit Number 12, which you have just recently identified, and I take it that the smaller map immediately next to it, that is, on the right, is Exhibit Number 11—am I correct, Mr. Treese?

Mr. Treese: That is correct, Your Honor.

Judge Robinson: Would you tell me the difference between those two documents?

Witness: Well, sir, when I first looked at the map on the right, I thought it was—it appeared to be the ordinance as it was first introduced.

The Court: If you went to the board, would that help you in your testimony?

Witness: Yes, Your Honor. (Witness withdrew from the stand and approached the board).

Well, sir, I thought this (indicating) was the original ordinance, but to the best of my recollection, the original ordinance had a dividing line along this boulevard (indicating) which placed one part of Algiers in A, and another part in District C. But I would rely—I would refer [193] to Mr. Jon Eckert of my staff who is more accurate on this aspect of it.

Judge Robinson: Very well, I will hold my question until then.

(Witness resumed the witness stand)

Mr. Treese: The Court has anticipated a future exhibit. The Government has an unamended chart reflecting Moreau's ordinance before it resulted——

Judge Robinson: In Number 12.

Mr. Treese: —in Number 12.

Judge Robinson: Very well.

By Mr. Treese:

Q. Were there any other plans submitted by interested groups, representative bodies of the City of New Orleans, or any other persons? A. At the first public hearings?

Q. Yes. A. Yes sir, the National Association for the Advancement of Colored People submitted a proposed redistricting plan.

Q. Together with the map, did they give a verbal description of their plan? A. Yes sir, they submitted both a map and a three- or four-page description of their proposed plan.

Deputy Clerk: Plaintiffs' Exhibit Number 15 marked for identification.

[194] (Plaintiffs' Exhibit Number 15 was so marked for identification)

By Mr. Treese:

Q. Was the NAACP plan discussed at the public hearings? A. Yes sir.

Q. Was it promoted by representatives of that organization? A. Yes sir. I don't recall, it was signed by the —the letter was signed—I forget who signed the letter, sir, that would be in the record, but the transcript would show that representatives of the NAACP spoke at the hearing and elaborated upon the plan.

Q. Are you familiar with the distinctions between the plan that ultimately passed the Council the first time and the NAACP plan? A. Yes sir.

Q. Are there any similarities, first of all, let me ask you that? A. The general similarities are that the District B is quite similar in configuration, District A is quite similar, and generally all of the dividing—not all of the dividing lines, but generally the dividing lines take a north-south configuration; from the Lake Pontchartrain on the north to the Mississippi River on the south, with the exception that [195] District B in both plans generally, again, has a north-south configuration, but does not extend to Lake Pontchartrain on the north.

Q. You have referred to a north-south configuration as applicable to—well, as a matter of fact, as applicable to all three of these plans. Is there any reason why you, your staff and, in fact, any other person creating a plan would

follow a north-south pattern? A. Well, sir, the wards, the seventeen wards of the City of New Orleans which have been in existence since the City Charter of 1914, or 1912, I don't recall exactly which year, those ward boundaries take a north-south configuration and in most cases run from Lake Pontchartrain to the Mississippi River, with the exception of a few wards, located in District B, or which coincide with District B. And to the best of my knowledge, the representative districts and the senatorial districts traditionally took a north-south configuration.

Q. How about the governmental services of the City of New Orleans, are they in any way related to the north-south configuration? A. The governmental service?

Q. Yes, I am speaking of streets, canals, sewers. A. Well sir, the canals of New Orleans would run both ways, but most of the—I would say the major canal network, many of them, or most of them, take a--run north [196] and south.

For example, one of the, one of the big natural barriers in the City of New Orleans is what we call the Industrial Canal, or I think it may be officially the Inner Harbor Navigation Canal, which was dug many years ago for the purpose of water traffic between Lake Pontchartrain to the Mississippi River, runs from Lake Pontchartrain to the Mississippi River, or very near the line, between the line between District—a little to the right of District D Line on all of those maps (indicating). It's a very large canal, and it has been a natural barrier for many years in the City of New Orleans.

In addition to that, there is—that's over in District E. The dividing line between District D and E of the Councilmanic Districts presently, those under the present plan which was adopted in 1961, generally follows what we call the People's Avenue Canal, which again, is another large drainage canal and adjacent to that drainage canal is a railroad track, that's that green line, sir, on that map you are looking at up there. It doesn't go all the way down to

the river, but it goes down to the northern part of that map (indicating).

Moving over to the left (indicating), there is the London Avenue Canal, again, which is a very large drainage canal that runs from Lake Pontchartrain southward——

[197] Q. May I interrupt you for a moment. Would it be more helpful, perhaps, since you know the city better than I do, if you would just point to the canals and so forth?

(Witness withdrew from the stand and approached the board)

A. Sir, this is the Industrial Canal (indicating with a pointer on the map) which runs down this way and into this, it has locks here to prevent flooding with the Mississippi River, but it continues this course.

Now moving over to the west is the (examining the map) —moving over to the west is People's Avenue which is a very large drainage canal, and just to the right of it—there are no homes or anything in between—but right adjacent to the canal is the railroad tracks of the Southern Railroad which comes along the Lake, curves down and parallels to form a double natural barrier down to this point (indicating).

Moving over westward, we have this large London Avenue Canal, which is another very large drainage canal, and these things contain huge leverage to prevent flooding the neighborhoods of the City of New Orleans. Most of the land in New Orleans is at or below sea level, and most of the canals—most of the water in the canals is well above sea level.

Moving over here (indicating on map) we have a natural barrier called Bayou St. John which travels down in here (indicating).

[198] Moving over here (indicating) we have the Orleans Avenue Canal which, again, has huge banks.

And finally moving over here (indicating), the dividing line of Orleans and Jefferson Parishes contains another huge drainage canal, and I believe it's called the Seven-

teenth Street—I'm sorry, this isn't it (indicating), this is it here (indicating); it is called the Seventeenth—it's called the Jefferson Street Canal.

Many of the major boulevards parallel these canals (indicating). This is West End Boulevard, and it is a very wide boulevard; there's two or three hundred feet of neutral ground between the roadway, and it comes down and meets with the Interstate 10 expressway system here (indicating). We have Canal Boulevard which is a major boulevard crossing City Park here (indicating), which is a large park.

We have Legion Field Boulevard and Franklin Avenue, which are our major boulevards.

Q. Now directing your attention, Mr. Pezant, to District C under the present plan, the streets, or arteries that are running parallel to the general direction of District C, are they major streets and arteries? A. Yes sir. This is Canal Street right here. It runs from the Mississippi River where this would be northwestward because of the curvature of the river, and then it meets up with this Canal Boulvard on a dogueway up.

[199] After Canal Street, we have Banks Street, which is a divided boulevard which parallels Canal Street, Tulane Avenue which is a continuation of a US highway which goes to Baton Rouge, continues in here (indicating). This is the Pontchartrain Expressway (indicating) which is an elevated expressway which picks up the traffic from the Mississippi River Bridge and brings it into the connection with the Interstate Highway.

Q. Now in the City of New Orleans—you may take the stand—(Witness resumed the witness stand)

Q. —in the City of New Orleans you have, of course, wards and precincts? A. Yes sir.

Q. In developing these plans, as you and your staff did, did you observe boundaries of the wards and precincts? A. We could no longer—we had to—Councilmanic Districts had to overlap ward boundaries for the first time. I should

say that in 1960 I was a member of the staff and the City Council was redistricted, and at that time the way that the Council was redistricted is that the ward combinations to constitute, or to comprise Councilmanic Districts were changed, but ward boundaries were left intact. In other words, a Councilmanic District either consisted at that time of one or more wards, a combination of wards, and a population [200] equivalency was reached by that method.

But at this time we realized that ward boundaries had to be overlapped to constitute Councilmanic Districts because of changes in population. For example, District E under the existing Councilmanic Districts, District E consists of Ward 9 of the City of New Orleans and it is geographically larger than the rest of the city; but in population in 1960 it contained the approximate population necessary to be one-fifth of the City of New Orleans, or the Councilmanic Districts.

At this time we knew that Ward 9, according to the '70 Decennial Census contained approximately 135,000 in population and we knew that the normal—the amount of people in a Councilmanic District would approximate 118,000 inasmuch as the new city census showed a population of 595,000 people.

So we knew that we could no longer observe boundaries. But we——

Q. Did you observe precinct boundaries? A. Yes sir, we observed precinct boundaries.

Q. Why? A. Well, sir, I was asked that question in my deposition. If—We have frequent elections in the City of New Orleans and we have two and three voting machines in each precinct. Many of those voting precincts are in carports of private homes, in schools, and if there is a procedure where you have to go in and show your registration papers, there [201] are registration books that are available to the poll commissioners; they have to check you out and see that you are currently registered and then after they do that, you go stand in a line and wait to vote and one or more of the machines.

We felt that if a person in a voting precinct had to go in a precinct and vote, but two different councilmen, depending upon where they lived in that particular precinct, that this would represent a very disorderly situation and perhaps, a chaotic situation.

The appropriate newspaper articles which showed during some elections in the City of New Orleans that long lines of people were waiting to vote in heavy elections; and it just didn't seem practical at all to the City Council staff that voting precincts had the additional burden of having to segregate people according to which councilman they would vote for.

Q. I wonder if you could describe the size of the precinct in terms of population to give the Court an idea of how many people we are talking about? A. Some precincts range in registered voter figures from four or five hundred up to twenty-five hundred registered voters. Now the population would be much larger.

Q. Do you have any idea at all what the population of a typical precinct is? [202] A. Well, sir, the total voter registration of the City would be about—and I am estimating, sir—about 230,000, and the population is 596,000; so that would give you some idea if an average precinct followed that same proportion, then a precinct with 2,000 or 2,500 voters couuld contain as much population as 5,000 or 6,000 people.

Q. So what you are telling the Court is that the precinct is a distinctive part of the election machinery of the City of New Orleans because of the votes and so forth——? A. Yes sir, and when you go in a precinct, sometimes—sometimes a New Orleans voter is required to go in on a municipal election and vote for some forty or fifty—maybe thirty or forty different offices that are being contested, and in addition to that, sometimes they have the additional burden of voting for thirty or forty proposed constitutional amendments to the State Constitution. And it's a very burdensome task; and these voting machines are set up so that——Let me give you an example, in Councilmanic District A, people would be voting for Canndidate A, B, or C, depending on how many there are. In another Councilmanic District, there may be three or four more candidates than that.

The City of New Orleans also overlaps two Congressional Districts, although those races are held at a different time; there are times when New Orleans voters in different parts of the city are voting on different offices, [203] different propositions, depending on whether they live in one Congressional District or another, or one Councilmanic District, or another, and those voting machines are set up so that they vote on the appropriate offices; and we think that it would be quite a burden for the poll commissioner to have to say, "Be sure you don't vote for the councilman in District B, or vote for councilman in District C," or vice versa.

Q. Is there any office that is selected on a ward-basis within the City of New Orleans? A. (Pausing in thought)

Q. How are tax assessors chosen?

Judge Robinson: I'm sorry?

Mr. Treese: How are tax assessors chosen?

Witness: Tax assessors are chosen by municipal districts which are combinations of wards. The neighborhood of Algiers, south of the River, is known as the Fifteenth Ward of the City, and it constitutes one assessorial district, one assessor in that district. There are seven assessors in the City of New Orleans, and Ward Nine, or District E is another assessment district—I'm sorry (repeating) I'm sorry, one assessment district contains both Districts E and D, Ward 7, 8, and 9, and a number of other assessment districts in the balance of the City of New Orleans—either 5 or 7, I am not certain.

[204] By Mr. Treese:

Q. Have you ever changed the boundary lines of a precinct? A. Yes sir, I have changed the boundary lines.

Q. What's involved? A. Well sir, we find population changes and people complain to the members of Council that there are too many people in the precinct and we con-

fer with the Registrar of Voters and an ordinance is required, a city ordinance is required, to legally change the boundaries of the precinct; and then we have to submit that change to the United States Attorney General in the same manner that we would submit a change in the Councilmanic Districts; and he has to pass on the same. This is a lengthy procedure and we get inquiries back from the Attorney General's Office asking why we are changing the precinct boundaries, what was the population before that change, after that change, minority population, and etcetera.

Judge Robinson: You are referring to which Attorney General? The United States?

Witness: The United States Attorney General.

Judge Robinson: Very well.

By Mr. Treese:

Q. All right now, Mr. Pezant, you have told the Court that you considered natural boundaries, you have displayed [205] some of those to us, you have told the Court you have considered streets, governmental services, canals, you observed precinct lines, ward lines, all of this was programmed into your considerations in developing a redistricting plan for the City of New Orleans.

Now let's go back to the fundamental reason for the charter provision, mainly, to balance population. I wonder if you could describe to the Court, how you reached a determination in achieving a population balance within the five districts?

In other words, you have already told the Court that District E had a hundred thirty thousand, plus, based on the 1970 Decennial results, Census results. Now how would you, for instance, eliminate the necessary population from District E and place it somewhere else? What considerations went through you and your staff's minds and your procedures, how did you arrive at this? A. In the digest that Mr. Salatich sent to my staff, he instructed us that we should observe the things I said we should observe, and he also said that with respect to race, we should be ever mindful, or some words to that effect, that the method in which we drew the plan would not gerrymander either in favor of white people, or in favor of—or in favor of either race, as a matter of fact. This is the way I interpreted his instructions.

[206] In changing District E, we had a couple of options available to us; on the northern end of District E, there are two middle class neighborhoods known as Pontchartrain Park and Gentilly Woods.

Q. Again, I wonder if you would step to the chart, if it please the Court? A. Yes.

(Witness withdrew from the stand and approached the board)

This is Pontchartrain Park (indicating), it is so noted on the map. It is a middle class black community, single-family homes. South of that is Gentilly Woods, south division, a middle class white community of single-family homes. We reasoned that a proposal to remove this entire area from District E would achieve certain objectives. These people are hemmed in on the east by this large Industrial Canal—Incidentally, they have transportation problems of access, which I don't know whether it is related, but they are bounded on the north by railroad tracks and Lake Pontchartrain, on the east by Industrial Canal, on the west by the two forms of the barriers that I mentioned, the railroad tracks and the People's Avenue Canal and they have a common shopping center—both of these neighborhoods have a common shopping center, a golf course that is used, not only by both of these neighborhoods, but other people. They have common [207] access to the Ches Menteur Highway and we reasoned that one possibility would be to place this entire neighborhood in the adjacent district would achieve—would leave District E with the population figure that it should have under the new proposal.

It would not change the initial makeup of District E inasmuch as these two neighborhoods are of fairly equal population.

And we also went down here (indicating) and drew another proposal that generally went across here (indicating) and down Congress, if I can find it on here (examining the map), a somewhat rectangular section that, again, contained—yes, sir, here it is (indicating)—compactness was one of the factors we were instructed to observe in drawing district lines.

This line, again (indicating), and Mr. Eckart can testify to the figures, generally removed from District E an equal number of whites and blacks so as not to deliberately draw a line along racial—to draw lines to observe one race or another. And the plan that was adopted included this proposal rather than the one on the north.

Mr. Treese: All right, resume your seat.

(Witness resumed the stand.)

By Mr. Treese:

Q. Did you consider the residences of the incumbent [208] City Council? A. Yes, sir, we considered them. We considered it preferable if other factors could be observed not to include two or more incumbents in a district, a particular district, as I said if the other guidelines could be observed.

Q. Which guidelines or factors, as you sometimes refer to them, did you consider to be of principal importance? A. Population, naturally, historic boundaries and neighborhoods, and the racial factors.

Q. All right. Were you ever instructed by any City Councilman for the City of New Orleans in your deliberations, in your preparation of these plans to protect his seat by placing him in a district so as not to compete with an already incumbent City Councilman? A. I was never directed to do that, no, sir.

Q. Did you ever discuss that with any City Councilman? A. Yes, sir, it was discussed with City Councilmen.

Q. Could you describe some of those discussions? A. Some members of the council privately discussed with the Councilmen that they preferred not to be involved in such a situation as to have to run against another incumbent, but I was never directed that this had to be a major consideration.

Q. Were you ever told not to consider it? [209] A. Sir?

Q. Were you ever told not to consider the residences of the City Councilmen? A. Not to consider the residences?

Q. Right. A. No.

Q. This never came up with your plan? A. That's right.

Q. You mentioned that this whole program began at the request of Congressman Moreau. A. Councilman Moreau.

Q. Excuse me, Councilman Moreau, I elevated him (smiling). Does he run within the district or does he run at large? A. He runs at large, sir.

Q. Did you consider the bridge to Algiers on, let's say, the future second bridge for the City of New Orleans in your consideration of redistricting? A. Yes, sir, we considered it as the second plan evolved, we gave it a lot more consideration.

Q. In other words, Mr. Pezant, Plan One did, in fact, break up Algiers into three sections, applied part of Algiers to A, B, and C, isn't that correct? A. That's correct, sir.

Q. Now you have also described, Mr. Pezant, that [210] part of your duties included the drafting or ordinances and there's been testimony in this case about certain gyrations within the city of New Orleans involving consideration of increasing the size of the City Council to nine—to eleven. Did your office have anything to do with the development ordinances, with the drafting of ordinances, or proposed ordinances to accomplish those results? A. Yes, sir.

On the same date that the first Moreau ordinance passed, I had prepared for Councilman Sapir an ordinance which would set up a charter change, the election, as required by the City Charter for the purpose of increasing the size of the New Orleans City Council from seven members to nine

members and from five districts to seven districts. That ordinance was passed on the same day that Councilman Moreau's Redistricting Ordinance was passed.

Q. All right, now we have had testimony describing the events surrounding those—the enlargement issues of the City Council, so I won't get into it with you, but your office actually did draft the ordinances, is that correct? A. I prepared the second ordinance for Council Sapir and Ciaccio, I believe, which would have proposed an increase in councilmen to eleven members.

Q. Very well.

[211] All right, let's get back to the question of approval or disapproval of Plan One by the Attorney General. Do you recall when Plan One was disapproved by the Attorney General?

Judge Robinson: Isn't that all stipulated, Mr. Treese?

Mr. Treese: Yes, sir, I suppose it is.

Judge Robinson: I seem to recall that it is.

Judge Waddy: It is stipulated.

By Mr. Treese:

Q. Mr. Pezant, upon the disapproval of Plan One by the Attorney General, were you and your staff ordered to get busy again to go back to the drawing board to redraw, to redistrict a plan? A. Yes, sir. Councilman Moreau spoke to me and said, "I am a Councilman at Large, and in effect I have no axes to grind; I am not involved in these districts and I feel a responsibility to get on with this business and draw a fair and equitable plan, one that you think, or the staff thought would overcome the objections to the first plan by the U. S. Attorney General's office."

Q. So what did you do? A. We drew four plans for Councilman Moreau.

Q. And would you describe those four plans briefly, briefly as possible just for identification? [212] A. Yes, sir. The first plan we submitted—I don't know how the numbers go, but we submitted four plans; one of them was the same plan that was submitted to the City Council by the NAACP at the first council hearing.

Q. Is that Plaintiff's Exhibit 15? A. Yes.

Q. All right. A. Another plan was the ordinance that was adopted.

Q. That's Plaintiff's Exhibit 3 and that is the plan that is in consideration. A. Two other plans incorporated two and three of the same districts as the NAACP plan had variations of one or two districts. There were quite largely based on the plan of the NAACP.

Q. Now, Mr. Pezant, you have described all of the considerations that were observed in the preparation of Plan One and preparation of the ordinance that evolved into Plan One. Were those same considerations taken into observation in preparing the four plans for Councilman Moreau? A. Yes, sir.

Q. All right. Let me ask you this, did you ever consider registration; by that, I mean concentration of registered voters, in addition to the population factors? A. Well, sir, from the very beginning, I was instructed by Mr. Salatich that the Justice Department would want [213] registration figures in connection with everything submitted by the City Council and every time we would draw a plan, we would first draw the population and then either at the same time or at some later date, we would obtain the voter registration figures and submit that also.

Q. All right, now—— A. We also had to be mindful of the fact that we did not just cut through and divide a concentration of black population.

Q. In compiling all of the statistics and facts necessary, and figures necessary, to prepare these plans, I assume that this information physically took up a lot of space and so forth, and was all contained within your office, is that correct? A. Yes, sir.

Q. Now was that information available to the citizens of the City of New Orleans? A. Readily so. After each public hearing we—people walked up to the members of the Council and Clerk of the Council and asked us for map. We gave out maps; we attached to each map the population and registration figures. People came in and visited

our offices and asked for copies of maps, or the ordinance that had been passed, all the population figures, agencies of city government, other agencies of city government called me to obtain copies of maps. I [214] estimate, sir, that the Street Department got so tired of giving us maps, you know, they got a little irked with us while consumption of maps, but we did readily give maps out to all agencies.

Q. All right, now we are up to that point where a second plan is being considered by the Council. Did you draft the ordinance for that second plan? A. A member of my staff drafted it under my supervision.

Q. I see. And that went to public hearing, did it not? A. Yes, sir, two more public hearings, to the best of my knowledge.

Q. And was there the same type of announcements to the public of public hearings and the same type of publicity surrounding these hearings? A. Yes, sir. In addition to that, the second public hearing—the public hearing for the ordinance, the second ordinance, was televised live by the—I think it is Channnel Twelve in New Orleans, the local affiliate of the—with the Public Broadcasting System, the educational television network; it was telecast live.

Q. All right, now was there a transcript made of those hearings? A. Not a transcript; there were tapes made of of those [215] hearings.

Q. And that passed, the ordinance that you had prepared passed? A. That ordinance passed, yes.

Q. Do you recall the vote, six to one? A. Yes, I believe it was six to one.

Q. All right.

Mr. Treese: Would the Court indulge me for a moment?

Judge Robinson: Certainly.

(Mr. Treese conferred privately off the record with Mr. Stoner.)

By Mr. Treese:

Q. I just have one last line of inquiry, Mr. Pezant, and that involves the city section known as Algiers.

I think you alluded to the fact that you gave increased attention to the Algiers problem in the preparation of the second plan. Would you further describe what that involved? A. Yes, sir. At the first public hearing, the City Council got informed from the public hearing considerable opposition from representatives of the Algiers Section to any division of that neighborhood. So that, obviously, had an effect both on the City Council and the City Council staff.

In addition to that, sir, we became a little [216] wiser, hopefully, of the important issue of the need for another bridge between the City of New Orleans and the other side of the river. It is a very critical issue in our city and as presently constituted, Councilmanic District A places a government representative in a terrible position of having to represent people on one side of the river who have violent opposition to the construction of a bridge in the proximity of their neighborhood in the eastern part—I'm sorry, in the large side of the city, let's call it, and the people on the other side are desperately in need of another artery to take them across this Mississippi River.

And to be a Councilman from either District A or B and represent those portions north of the river and have to represent a group of people on the south side of the river who are violently opposed to it is a very untenable situation.

So we reasoned that the logical thing to do would be to place Algiers in combination with one of either District C, D or E.

When the city charter was first adopted in 1954, Algiers was a part of what now is Councilmanic District—it was a part of Councilmanic District C pretty much as the—pretty much as the district is now proposed by ordinance.

In other words, the people who live—I may have to elaborate on that, sir. Some years ago, the Mississippi River Bridge Authority proposed a bridge across the Mississippi [217] River which would have its northern terminus in the vicinity of Napoleon Avenue.

Judge Robinson: And where is that?
Witness: Would you want me to come down there?
Judge Robinson: Yes, please.

(Witness withdrew from the stand again and approached the board.)

Witness: This, sir, (indicating) is Napoleon Avenue. It runs—it is an avenue of beautiful New Orleans homes and everybody felt that a large bridge across this Mississippi River would result in the destruction of the neutral grounds.

New Orleans has large neutral grounds or grass areas between this roadway, wide grass area, which are results of drainage canals being filled in many years ago and gives us the benefit of wide boulevards.

The people in this entire uptown (indicating) area organized to prevent construction of a bridge that would pour forty or fifty thousand vehicles a day along this historic beautiful avenue.

At a later time, the Mississippi River Bridge Authority was considering, again, a bridge which would have its northern terminus at General Taylor Avenue, if I can find it—I think this is it (indicating), right here, General Taylor, and that resulted in some pretty violent opposition by the [218] black community in that area to the construction of a bridge.

So the uptown residents of New Orleans are generally bitterly opposed to the construction of a bridge anywhere in this area (indicating on map) of the city.

(Witness resumed the witness stand.)

Mr. Treese: I have no further questions.
Judge Robinson: At this point I think this would be a convenient time for us to take a brief recess.
At this point, Marshal, the Court will stand in recess for ten minutes.

(Whereupon, the Court recessed at 11:15 a.m.)

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MID-MORNING SESSION

(The Three-Judge Court reconvened at 11:29 a.m.)
Judge Robinson: Mr. Shurtliff, you may cross-examine.

Cross-Examination

By Mr. Shurtliff:

Q. Mr. Pezant, do you know approximately how many precincts there are in New Orleans? A. To the best of my knowledge, sir, there are between four and five hundred, there might be five hundred at this time, between four hundred fifty and five hundred.
[219] Q. And have there been changes made in precinct boundaries in recent years? A. A minor number of changes, sir. We have submitted about four or five to the Justice Department in the past year or two.
Q. Four or five precinct changes? A. Yes, sir, to the best of my knowledge.
Q. Were there changes made in precinct boundaries before the last year, but within the decade? A. In the last twelve months.
Q. Since you have been a director of the Council's Research Staff in 1961, have there been other precinct boundary changes? A. Yes, sir.
Q. Approximately how many, do you recall? A. I don't really know, Mr. Shurtliff, because up until the past few years, a number of changes were made by the—proposed by the Registrar of Voters, and perhaps by the City Attorney's office, or other offices. I wouldn't really know.
Q. But you do know that changes were made in precinct boundaries? A. Yes, sir, changes were made.
Q. And you know that within the last year, or so, four or five changes have been made? [220] A. Yes, sir.
Q. And submitted to the Attorney General pursuant to Section Five of the Voting Rights Act of 1965? A. Yes, sir.
Q. And were those changes approved by the Attorney General? A. Sir, of the fours or five, to the best of my

knowledge, most of them are still pending, but it is quite possible a couple of them were approved by the Attorney General's office.

You see, to the best of my knowledge, that approval would go to the City Attorney General's office, rather than to my office.

Q. You stated that you have worked with the Bureau of Governmental Research in the collection and correlation of population data, is that correct? A. That's correct.

Q. And in your experience, are statistics and data provided by that agency reliable? A. Yes, sir.

Q. In late 1970, or early 1971, pursuant to requests from Councilman Moreau you started developing concepts of redistricting? A. Yes, sir.

Q. Approximately how many concepts did you develop [221] at that time? A. About nine.

Q. And were there large differences, or variations in those concepts? A. I don't think the differences were too large, but that may be a matter of opinion.

Q. What did you use as a starting point? A. We used as a starting point the traditional boundaries of the City of New Orleans and the geographic configuration of the city.

Q. Would you state that with a little more particularity, did you use ward lines, precinct lines, or—— A. Ward lines. We thought that it was injudicious to divide a precinct, so to that extent we used precinct lines.

Q. How did you use ward lines in those concepts? A. I just gave an example in District E how we did that.

We had this traditional ward line that goes from Lake Pontchartrain to the Mississippi River, and we knew that we had to change that boundary to accommodate the change in population of that district and we drew what we thought were compact, new lines.

Q. So at the outset, you knew that you could not follow totally existing ward line, is that correct? [222] A. Yes.

Q. What factors did you consider given that knowledge as to where to change the ward lines? A. Where popula-

tion changes made it necessary and we often in lieu of traditional ward lines tried to use major boulevards to the extent that we could.

Q. And major boulevards are some of those that you described on direct examination when you listed some of the boulevards on the northern part of the city? A. Yes, sir.

Q. Did you use Interstate Highways as major dividing lines? A. No, sir, only one Interstate Highway.

Q. In which direction does it run? A. It runs east-west until it reaches the proximity of the Industrial Cancel and then it turns southerly. It makes a general turn southerly into the central business district; then travels northwest, again, to the line dividing Jefferson and Orleans Parishes.

Q. You only have the one Interstate within the city of New Orleans? A. Yes, sir.

Q. After you developed these conceptual plans, did you present them to the Councilman, or a Councilman? A. I personally informed each Councilman and I [223] perhaps did it by memorandum, or memoranda, that we had these concepts for the Council to start visualizing the possibility for redistricting the City of New Orleans.

To the best of my knowledge, most or all of those Councilmen personally reviewed those concepts.

Q. Did you provide population statistics at that time? A. Very rough statistics because we had only—we had a newspaper report of what the ward figures, population figures, were, and at that time the City Planning Commission which had been designated as the central storehouse for census data, I had instructed them to give me refined population figures when they became available.

Q. Did you provide voter registration figures at that time? A. I'm not certain, Mr. Shurtliff, we possibly did.

Q. Did you have those figures? A. We started collecting those figures at some time after we understood this effort for the reason I have previously stated, we were advised by the city attorney's office that we must have those figures for the U.S. Attorney General's Office.

Q. That was the only reason that you collected them? A. Well, sir, that was the primary reason we collected them. We also were asked every time there was a [224] public hearing to provide not only population figures, but voter registration figures.

Q. Who were you asked by? A. By people who attended the public hearings.

Q. Were you ever asked by a Councilman to provide those figures? A. I think so, to the best of my knowledge, some members of the council asked for those figures.

Q. Do you know why they asked for those figures? A. No, sir, I did not know.

Q. Do you know what use they put those figures to? A. No, sir, I do not know what use they put those figures to.

Q. After you drew the conceptual plans, when did you then draw a plan in final form, ordinance form? A. In early 1972 we prepared an ordinance for Councilman Moreau which became the first plan that was submitted to the Attorney General's Office.

Q. That was the plan that subsequently passed the City Council? A. It was amended by the City Council before it was passed.

Q. Were there public hearings held on that plan? A. Yes, sir.

Q. On the initial plan considered by the City Council? [225] A. The ordinance was introduced.

Q. And transcripts of those hearings were made? A. Yes, sir.

Q. Are those transcripts complete? A. Yes, sir. I asked the Clerk of the City Council to provide me with official transcripts of the public hearings and they were certify to, as I understand it, by Mr. Joseph Peterson, Clerk of the Council.

Q. And does that transcript include written statements, if any, that were presented to the Council with those hearings? A. Written statements? I don't know, sir. I don't know whether the court reporter transcribed those statements within the transcript or not.

Q. And what was discussed at this public hearing? A. All right, sir, the public hearing took two directions; one direction, the National Association for the Advancement of Colored People submitted the proposed plan that has been entered into the Court; the other direction taken at the public hearing was that there was a considerable effort to have—to urge the City Council to increase the size of the Council.

Q. What persons urged that position? A. Mostly black representatives.

Q. And what were they advocating? [226] A. They were advocating, to the best of my knowledge, either nine or eleven—nine and eleven-member council, more emphasis on eleven than nine.

Q. And was that an eleven-member single district plan that they were advocating? A. I believe one group advocated a ten-district plan with one Councilman who would serve as vice mayor, to the best of my knowledge.

Q. Did any one of those hearings advocate an eleven-member single district plan? A. It is possible, Mr. Shurtliff, but as I recall that advocacy was a ten-district, one at large, vice-mayor plan.

Q. And those persons that spoke to a nine-member council, what kind of plan did they advocate? A. I don't know. The general direction was increased—to increase the size of the City Council, Mr. Shurtliff, I am not certain how many people advocated a nine-member plan.

Q. Was anyone advocated, as you recall advocating a nine-member single district plan? A. I can't be sure.

Q. Did your office ever prepare an ordinance calling for a referendum election on a eleven-member plan? A. Yes, sir.

Q. Did that ordinance call for a ten-member by [227] district one at large plan? A. No, sir, it did not.

Q. Did it call for a eleven single member district plan? A. No.

Q. What did it call for? A. It called for a nine-district councilmen and two at-large.

Q. Do you know the genesis of the nine-district two at-large plan? A. Do I know the genesis of it? The ordinance to do that was introduced by Councilman Sapir and Ciaccio.

Q. Do you recall anyone at the public hearings advocating that plan? A. I can't be sure, but I again, I say the general direction, or one of the major directions of the speakers at the public hearing was to increase the size of the City Council.

Q. Did you ever prepare an ordinance calling for a nine- or an eleven-member single district plan? A. A nine or an eleven? I prepared an ordinance for a nine-member council with seven districts. I prepared an ordinance for an eleven-member council with nine districts.

Q. But you never prepared a plan for eleven or a nine single member district? [228] A. I've never prepared an ordinance for eleven-single member district, or nine-member.

Q. Were you ever asked to by any Councilman? A. No, sir.

Q. You stated at the public hearings the discussions also went to the plan under consideration by the City Council, is that correct? A. Yes, sir.

Q. And were the persons that spoke generally for or against that proposal, do you recall? A. They were generally against it.

Q. Do you recall what the positions were—what their criticism was, the general criticism, if there was a general criticism? A. The people who lived in the Algiers Section of the city were critical of the division of that area. The black representatives were generally in favor of an enlarged City Council and that to my knowledge is the direction and the NAACP submitted the redistricting plan that has been entered.

Q. After a public hearing, the proposed ordinance was amended, is that correct? A. Yes, sir.

Q. And what did it do in terms of the Algiers or Fifteenth Ward problem? A. It did what is indicated on the map (indicating [229] by pointing) on the left. It divided Algiers into three Councilmanic Districts.

Q. And this was after the persons from Algiers asked that it be left intact? A. I'm sorry, you say after? (Pausing in thought) Yes, it did.

Q. What other changes did the amendment to the original ordinance make? A. Well, Mr. Eckert is better qualified to respond to that. He did the actual work, but it would have had to make some change on the other side of the river, on the northern side of the river, to compensate for for population changes that would have been brought about by the amendment to the ordinance.

Q. Mr. Pezant, are any city services provided by the wards? A. The assessors are elected by combinations of wards, assessment districts, as I mentioned before.

Q. How many assessor districts are there? A. There are seven, to the best of my knowledge, sir.

Q. Are those—— A. But it might be five. I am almost positive it is seven.

Q. Are they represented on a one-man one-vote principle? [230] A. No, sir, they are not.

Q. Are any other services to your knowledge provided on a ward basis? A. Well, sir, the community of Algiers has its own Clerk of the Court; it has its own court; it has some city services that are provided over there for those people, weight-tag inspection, and as I said, officially, by law, they are provided with their own city court and all the things that go with a city court. They have their own assessor and clerk of the court, councilman, things of that nature. We have a first and second city court.

Q. And one is in Algiers and one is on the main body? A. Yes.

Q. At the time the initial or first plan was approved, then, Algiers was split into three prospective Councilmanic Districts, is that correct? A. Yes, that was as the ordinance passed.

Q. Were there any ordinances proposed dealing with the city courts? A. No, sir. I believe those are established by state law.

Q. The factors that went into the drawing of the first plan then were ward lines? A. Traditional political boundaries, geographic [231] boundaries, population, and as I said, the effort to avoid any dilution of the black vote or black population.

Q. Would you define that for us, what is meant by in your opinion dilution of the black vote, or black population? A. Well, sir, I didn't originate the term; it came to me in a digest of the regulations, or requirements of the Justice Department.

Q. How did you use the term? A. How did I interpret it? As to not draw any lines to gerrymander, to divide the black neighborhoods so that the population of voting strength of that neighborhood would be split up.

Q. What is the neighborhood? A. The neighborhood? What is a neighborhood? I don't know that I am an expert on what is a neighborhood, but as I just described, we have neighborhoods like the Pontchartrain subdivision, the Gentilly Woods subdivision, which generally takes on a characteristics of the neighborhood. There are associations formed by such neighborhood groups.

Q. All right. In your definition, are neighborhoods smaller or larger than wards? A. They are smaller than wards, generally.

Q. Do you have any neighborhoods that cross ward lines? A. I am sure it is quite possible, sir, that there [232] are neighborhoods that cross border lines.

Q. Could you—on your knowledge of the city, which we don't have, could you tell us one or more that do in your opinion? A. Neighborhoods that——

Q. Cross ward lines. A. I don't know of any offhand, Mr. Shurtliff, but I don't deny the possibility.

Q. Did you consider as a factor in drawing the redistricting plan whether or not to place two or more incumbents

in the same Councilmanic districts? A. Yes sir, I considered that.

Q. Why was that a factor? A. Well, sir, my staff and I considered it a factor. We thought that where other guidelines for—where the other guidelines could be observed, it was not necessarily compelling to put two councilmen in the same district for one simple reason, before a redistricting plan could become anything else, it had to become an ordinance in the City of New Orleans.

Q. Why would placing two or more incumbent city councilmen in the same district have an impact on becoming an ordinance? A. Well, sir, it is quite possible councilmen who placed in the same district would react adversely to such an ordinance. This is a possibility.

[233] Q. Why would they act adversely to that? A. We went over that in my deposition, Mr. Shurtliff, and I don't know that any incumbent—my understanding is generally incumbent office holders do not lie to run from a district with other incumbents office holders for the same office.

Q. Do incumbent councilmen or incumbent politicians like to run from districts in which they might be defeated? A. I don't know whether I am an expert on, even though I have studied political science, Mr. Shurtliff. You are asking me what goes on in the minds of incumbent office holders?

Q. If you drew a district that placed two or more incumbents in the same district, do you believe that that would have impact on whether or not that plan would be passed as an ordinance? A. Yes, I thought it would have an effect.

Q. And that effect would be because councilmen would not like that? A. I presume that incumbent councilmen would not like the possibility of an ordinance that places them in a district with another incumbent councilman.

Q. Did anyone ever tell you that, any councilman? A. I said that individual members of the council have expressed to me at times a preference not to have to be [234] placed in a district with other incumbents, but I was never mandated not to do this. As a matter of fact, I wasn't given

a lot of specific instructions by councilmen. This plan was prepared; I was given general instructions by Councilman Moreau and on another occasion Councilman Beer told me that in the first undertaking of this entire assignment, he said, "remember this, getting Peter Beer reelected is not one of the most important considerations."

Q. Did any other councilmen ever tell you that? A. No, sir.

Q. So some councilmen, though, did express their desire not to be placed in the same district with other councilmen? A. Yes.

Q. Did they express any other wishes along those lines? A. Expressed a wish to get this job done, Mr. Shurtliff.

Q. Did any ever express wishes to particular configurations they would like their district to take? A. On a few occasions, Mr. Shurtliff, an individual member of the council would ask me if an individual line were changed slightly, what would be the population figures and I never considered those as any official plans because all we did was provide a service of recounting—recapitulating [235] figures for them.

Judge Robinson: How frequently did that occur, inquiries of that sort.

Witness: Sir, to the best of my knowledge, three or four occasions.

By Mr. Shurtliff:

Q. Would you provide those figures? A. Yes, sir.

Q. Would they be provided by population and voter registration? A. Yes, sir, I generally provided both statistics.

Q. Were they broken down by race? A. Yes, sir, population and voter registration broken down by race.

Q. You stated that when you came to consider the second plan after the first plan had been objected to by the Attorney General that you considered more importantly at that time the bridge issue as it affected Algiers. A. Yes, sir.

Q. Were any other factors that changed between the first and second plan? A. Yes, sir, we began to seriously consider the submission by the NAACP as a viable plan that could be approved by the City Council and could be accepted by the Justice Department.

[236] Q. How was it seriously considered? A. Well, sir, I believe my testimony showed that we submitted two Councilman Moreau the NAACP Plan and three other plans which were basically variations of the NAACP Plan.

Q. Was the NAACP Plan considered during the first drawing of the first plan? A. The NAACP Plan was not presented until after the first plan was drawn and prepared into an ordinance.

Q. Was it presented before the first plan was finally approved by the City Council? A. It was presented between the introduction of the first plan as an ordinance and the final passage of that ordinance during the period in which the ordinance was acted upon.

Q. And was it presented before the amendments to the first plan was offered? A. Yes, sir, because the amendments were officially introduced on the day that, to the best of my knowledge, on the day that the first ordinance was passed.

Q. The amendments to the first ordinance were presented as an amendment on the date they passed? A. To the best of my knowledge, sir.

Q. This was after the NAACP Plan had been presented to the council? A. Yes, it would have been.

[237] Q. Did you participate in the discussion leading up to the plans presented by the amendments, the first time? A. The amendments to the first ordinance?

Q. Right. A. Yes, sir.

Q. Where were those discussions held? A. They were held in the office where my research staff works.

Q. And did you attend that? A. Part of the meeting I attended, yes, sir. If you want to call it a meeting.

Q. Who else was in attendance? A. I believe all five district councilmen.

Q. Would you describe what of the meeting? A. I didn't attend the entire meeting, Mr. Shurtliff, I was there for a period of time.

Q. Would you describe that portion of the meeting that you were present at? A. Describe it? The member, three members or more members of the City Council decided to amend the ordinance as indicated on that map (indicat- on the left.

Q. And were they discussing prospective amendments in a plan? A. Yes, they were asking us for figures. When they would draw a line they would ask us to run the figures off [238] for them.

Q. And did you do that? A. Yes.

Q. When I say "you" I mean your staff. A. Well, my staff.

Q. How long did this meeting last, do you know? A. Sir, it could have been—it could have been an hour, or two hours.

Q. And as a result of that meeting, was an amendment offered to the ordinance? A. Yes, sir.

Q. And what was that amendment—was that amendment subsequently adopted? A. Yes, sir, it was adopted.

Q. And the ordinance was subsequently adopted? A. Yes, it was adopted.

Q. At this meeting, this discussion, what personnel of yours or your staff was there? A. Well, we would go in in the meeting, we would get some line, we would go out to our calculator and start refiguring the population. Mr. John Eckert was there and at least in the other room, and Mr. Gregory Smith of my staff was present and available for the counting service.

Q. And during the course of this meeting, it was necessary to recompute the figures because different lines [239] were being discussed? A. Yes, sir.

Q. And were you telling people to change the lines or making suggestions as to the changing of lines? A. No, sir, I wasn't telling them where to change the lines. I had submitted the original plans.

Q. Who were making suggestions as to where lines were to be changed? A. Individual members of the council were discussing it among themselves, these changes.

Q. And then would report the change to you and your staff and ask to compute the figures? A. Yes, sir.

Q. Mr. Pezant, do you or your office have authority to compel the introduction of any ordinances? A. No, sir.

Q. You work at the direction of the City Council? A. I work at the general direction of the City Council, yes sir.

Q. What kind of maps were being used at that meeting, do you recall? A. The only map I recall—well, the concept may be still on the wall or folded up at that time, no ordinance had been introduced, but to the best of my knowledge, the map that was being used was the map that showed the ordinance [240] that was introduced which is not on the wall, as I understand.

Q. Were there any other reference materials or maps available? A. Well, sir, there were blank maps showing the wards and precincts or the city of New Orleans.

Q. Was there a map used at that time that illustrated the intensity of voter registration by race in the city of New Orleans? A. It was available in the office, sir, and I don't know if it was being used in that particular room, but it had been seen previously by almost all of the members of the City Council, both the population intensity and the voter registration intensity.

Q. Was it on the wall in that room? A. I don't know whether it was on the wall, sir, or if it was behind a table. We have a number of maps, and maybe Mr. Eckert knows better than I do, but I don't recall it being on the wall.

Q. Do you recall it being used during that meeting? A. I can't say for certain, Mr. Shurtliff. It had been seen prior to that meeting by most of the members of the City Council.

Q. What was the purpose of that map, Mr. Pezant? A. Well, sir, we are an information agency of the city government and we felt that it was a very good idea to

[241] draw a map showing population intensities by race and voter registration; by race because both of these factors as I understood the instructions from the City Attorney's Office had to be considered in submitting a plan to the U.S. Attorney General.

Q. Earlier when you were discussing the problem with District E, you said that District E consists under the present plan of apportionment entirely of Ward Nine, is that correct? A. That's correct.

Q. And that was over-populated by some sixteen or eighteen thousand persons? A. Yes, sir.

Q. So it was necessary to make some change in order to equalize the population? A. Yes, sir.

Q. And you stated that in the preparation of concepts, you considered making changes in two areas, is that correct? A. Yes, sir.

Q. And what are the racial identities of those two areas in the city? A. As we drew the two areas, the racial identity is generally balanced between whites and blacks on the portions that were being considered for change.

Q. Are they separate neighborhoods, or are they [242] totally integrated neighborhoods in racial composition? A. The section along the riverfront that would be represented by the line that we drew is substantially integrated. However, there would be perhaps more whites toward the riverfront and more blacks towards the northern part of that little section.

The neighborhoods of Pontchartrain and Gentilly Woods were originally developed; one is a black neighborhood and one is a white neighborhod, but there is considerable integration in the Gentilly Woods neighborhood, to my knowledge.

Q. Did you consider moving just one or the other of the Gentilly Woods, or Pontchartrain Park? A. No, sir.

Q. Why? A. Well, again, I thought that I—if I drew and took out an all black or all white neighborhood, this came very close to gerrymandering in favor of race.

Q. Why did you consider that? A. Well, sir, it certainly affects the racial makeup of District E if I deliberately carve out a section of that district which is all black or all white.

Q. But if you take out approximate equal numbers, at least, in District E—— A. At least District E, and basically, it has the same racial makeup that it had before the change, and if we [243] transfer an equal number of blacks and whites to District D, it doesn't materially affect the racial makeup of that neighborhood, either.

Q. Was that your desire? A. My desire, sir?

Q. Yes. A. I thought it was a proper way to redistrict.

Q. And this was built into the concept that you designed, your understanding of a proper way to redistricting? A. This was part of it, yes.

Q. And in the drawing of the four plans submitted to Councilman Moreau the second time after the first ordinance had been objected to by the Attorney General, you drew four additional plans for Councilman Moreau to consider . . . A. We drew three additional plans, and we submitted the NAACP Plan and submitted three variations of those plans.

Q. And during the drawing of those plans and those variations, did you consider as you had previously, leaving undisturbed the general racial composition of districts as a desirable end? A. Yes, we still thought it was desirable; however, the NAACP Plan does take on a different configuration between these Districts D and E. It travels along and parallels to the Mississippi River and it removes generally the places, the white portion, the white neighborhoods of that area into [244] District D, and the black neighborhoods would go to District E.

Q. What would be the result of that placement in terms of District E and D? Would it . . . A. It tends to make District E a white district and it—to the best of my knowledge, it changes the population figures and gives them a majority black population to District E.

Q. To District E? A. Yes.

Q. And makes a white majority district of District E? A. D.

Q. And in their plan did they follow traditional historical boundaries in making that division? A. We though they did generally.

Q. And when you say "we", you are including you and your staff? A. My staff and I, yes, sir.

Q. So you submitted this plan to the Councilman Moreau? A. Yes, sir.

Q. And you felt that it did not contravene any of the factors that you though important in drawing a redistricting plan? A. Well, it contravened that one factor and that one area, but then again, we felt that the fact that the NAACP [245] Plan, we felt that it had a reasonable chance to receive approval of the Justice Department.

Q. What do you mean by "reasonable chance to receive approval of the Justice Department"? A. Well, there was some community support for the NAACP Plan and we thought—my staff thought it was a fairly good plan and on that basis we felt that it had a fairly good chance of receiving approval from the Justice Department.

Q. What impact, if any, did the plan, the NAACP Plan, have on incumbent councilmen? A. It had the impact of placing two incumbent councilmen in one district.

Q. Did you think that this was an adverse feature of that plan? A. Yes, sir. We thought it was an adverse feature, but not a paramount consideration.

Judge Waddy: Which district was that?

Witness: District C, sir.

By Mr. Shurtliff:

Q. You nevertheless submitted to Councilman Moreau. A. Yes, sir.

Q. Did either of the other two plans that you submitted to Councilman Moreau place two or more incumbent councilmen in the same district? A. One other plan.

[246] Q. So that two of the four plans did place two incumbent councilmen in the same district? A. Yes.

Q. And the plan accepted by the City Council ultimately did not, is that correct? A. That's correct.

Q. Did Councilman Moreau ever express to you the reasons why he selected the one plan over the other three plans that you submitted to him? A. Not to my knowledge.

Q. He never expressed an opinion as to those other plans? A. No, sir, not to my knowledge.

Q. Did he ever say anything to you about the fact that two of the plans placed two or more incumbent councilmen in the same district? A. Perhaps at an earlier time Councilman Moreau expressed a purpose not to place two councilmen in the same district.

Q. Before you submitted the four plans to him? A. It is possible it was before, sir.

Q. Is it equally possible it was after? A. It's possible.

Q. If it were before you submitted the plans, why did you nevertheless submit two plans to him that had that [247] impact? A. Again, we thought that the NAACP Plan or variations of that plan had a chance to be approved by the Attorney General, sir.

Q. A reasonable chance? A. Those are my words, "reasonable".

Q. Did you think it had an excellent chance? A. Sir, I don't—I couldn't say an excellent chance. I don't know what the—I am not familiar with the Justice Department of the United States.

Q. Were you familiar with the letter received by the City Attorney's Office in reference to the first plan? A. Yes, sir, I read that letter.

Q. And do you recall what that objection was based on? A. Yes, sir, that objection was based on the fact that the plan diluted black voting strength by placing blacks in combination with white in other districts.

Q. And in the drafting of the second ordinance, did you seek to avoid that result? A. Yes.

Q. And could you tell us the differences between the first plan and the second plan in that regard? A. I would

like to look at the figures, Mr. Shurtliff, but to the best of my knowledge, the District B as contained . . .

[248] Judge Robinson: First, just a moment. Is there any objection to this witness looking at the figures?

Mr. Shurtliff: No, sir.

Mr. Treese: Would the Court indulge us for a moment?

Judge Robinson: Certainly.

(Counsel conferred privately off the record.)

Mr. Treese: We have stipulated with respect to these figures, Your Honor.

Judge Robinson: Are these figures in Paragraph 16 of the complaint?

Mr. Treese: No, these would be a new presentation, Your Honor, it would be a new exhibit. Actually, the Government had prepared these in advance of trial and it seems to be coming in now.

Judge Robinson: It might be helpful to the Court if the Court had an opportunity to see these figures and to understand just what these figures are. Do you have extra copies?

Mr. Treese: Yes, I do.

Judge Waddy: Let it be marked.

Mr. Shurtliff: 3 for the Court. (passing documents up)

Judge Robinson: Let them be marked.

Judge Waddy: The original could be marked and [249] then the copies for us.

Deputy Clerk: Do you have the original, sir?

Mr. Treese: These—no, I don't. These were taken as copies supplied by the Government to me. I made Xerox copies of the copies that I had.

Deputy Clerk: (Addressing Mr. Shurtliff) Do you have the original?

Mr. Shurtliff: The original of these figures are attached to Defendant's Exhibits 2 to 7. We have copies of those figures in a packet, but they are really from exhibits 2 to 7.

Mr. Treese: As I understand the compilation . . .

Judge Waddy: Just mark them.

Deputy Clerk: They have been marked, Your Honor.

Mr. Treese: As I understand it, these figures will appear as a legend on an acetate exhibit that the Government will later offer, but these are the meaningful statistics relating to each of the plans that will be presented into evidence in the trial of this case. You will see that—I believe there are five (counting documents)—six, I'm sorry. It should be six pages attached to each packet.

Mr. Shurtliff: If it would be more convenient for the Court and the parties, we could ask that this be labeled—this compilation of these statistics be labeled exhibit 1-A or ad seriatum.

[250] Judge Robinson: As Defendant's Exhibit.

Mr. Shurtliff: Right.

Judge Robinson: Very well. Give it whatever number you like in the event you have a prior order in which you want to present them, and it is Court's understanding that these figures are stipulated to, so why can't they go into evidence at this point?

Mr. Treese: Agreeable.

Judge Robinson: Is that agreeable, gentlemen?

Mr. Shurtliff: That is agreeable.

Judge Robinson: The Clerk will mark the exhibit.

Deputy Clerk: Defendant's Exhibit Number 26 marked and received into evidence.

Judge Waddy: Number 26?

Deputy Clerk: Yes, sir.

(Defendant's Exhibit Number 26 was so marked and received into evidence.)

Judge Robinson: You may resume, Mr. Shurtliff.

By Mr. Shurtliff:

Q. Could you therefore, Mr. Pezant, describe the differences in that respect between the first and second plans? A. Yes, sir. In the first plan, Councilmanic District B . . .

Judge Robinson: Now which page are you on, Mr. Pezant?

[251] Witness: Sir, I am reading the 1972 redistricting plan, ordinance 4796.

Judge Robinson: Very well. You may continue.

Witness: Well, in the first plan, 4796, Councilmanic District B contained a black population of 58.8 percent, but the voter registration was 45.2 percent. In the final ordinance that passed, those same figures for District B, the black population would have increased from 58.8 to 64.1; the voter registration figures have increased from 45.2 percent to 52.6 percent.

At the same time District E contained the same black population figures of 50.6 percent in each plan and the voter registration increased from 41.0 percent to 43.2 percent.

Therefore, two of the districts had increases in black population and/or voter registration. There was not—there was not one district that had a majority of black voter registration in the first plan, but District B had a majority black voter registration in the second plan and increased the voter registration of District E.

Q. Are there any other differences? A. Well, yes, sir. The other figures have to change, too. If you increase—if you increase one, they certainly have an effect on the other.

Q. Are there any other differences on the plans insofar as they relate to the capacity of the city to effectively [252] govern and provide city services? A. Would you repeat that question?

Q. Does the difference in plans have any impact on providing the government services, or on the government structure of the city, itself? A. I fail to understand your question.

Q. Well, I will withdraw the question.

And trying to overcome the objection of the Attorney General, and come up with a plan which would first pass the City Council, and secondly receive the approval of the

Attorney General, did you during the drawing of those plans consider whether or not to place two or more incumbent councilmen in the same district? A. We considered it, but it was not a paramount issue.

Q. What were paramount factors at that time, focusing on the second plan? A. Again, sir, the important or the paramount issues that we thought had to be considered were population, racial dilution, historic boundaries and natural boundaries.

Q. And your definition of "racial dilution" was a carryover from—was it the same definition that you had when you were working on the first plan; that is, not to unduly affect the racial composition of any district? A. Or not to deliberately divide the concentration [253] of racial population of voter registration.

Q. Were there any geographic changes in District E between the first and the second plan? A. I believe District E, Mr. Shurtliff, was the same in both plans except one minor precinct down at the riverfront. As the second ordinance was introduced, there was one additional precinct of District E that was contained in it, and as I recall, the Council straightened out the line and made the lines straight, one precinct, I believe.

Q. One precinct was added to District E in the second plan, or taken out? A. In the introduction of the ordinance, Mr. Shurtliff, there was one additional precinct . . .

Judge Roibnson: Is there any objection to the witness going over and taking a look at the map to assist in his answer?

Mr. Shurtliff: No, Your Honor.

Judge Robinson: You may do that.

(Witness withdrew from the stand and approached the board.)

Witness: Sir, to the best of my knowledge, this precinct eleven (indicating) which goes like this was placed in District D in the ordinance that was introduced. As the ordinance passed, precinct eleven was put back in E and

the line was drawn straight like this (indicating) and I believe [254] the factor was that with this precinct in E, E was slightly larger than D and within D, D was slightly larger than E.

In other words, it was a precinct that very slightly changed the population and it has no other significance that I know of. I believe one member of the Council, Mr. Lambert, had first wanted to place this district in D and eventually the Council, or to the best of my knowledge, that's the only difference between E, as it was in the first plan,——

Judge Robinson: Mr. Shurtliff, understood your question had to do with changes in the plan that ultimately eventuated the plan now before the Court, am I correct?

Mr. Shurtliff: Yes sir.

Judge Robinson: The witness has made his references to a different map.

By Mr. Shurtliff:

Q. This is it, Mr. Pezant (indicating), which of these is the plan under consideration by the Court now?

Judge Waddy: It has been stipulated that this is the plan, this one over here (indicating), is the plan before the Court.

By Mr. Shurtliff:

Q. And this was the first plan (indicating) presented to the Attorney General? A. Yes sir, I thought your question was did E change. Really, E did not change. I told you what [255] changes had been considered.

Judge Robinson: Did E change on either of the two plans submitted to the Attorney General?

Witness: No sir.

Mr. Shurtliff: May it please the Court——

Judge Robinson: Yes.

Mr. Shurtliff: —I believe I may have misled Mr. Pezant, and he likely misunderstood the thrust of my question. He described the changes, and I believe I am correct, that took

place on consideration of the second plan by the City Council, between the plan that was introduced and final adoption by the Council.

Judge Robinson: The second plan.

Mr. Shurtliff: Right.

Judge Robinson: Is that correct, Mr. Pezant?

Witness: Was there a change in E, sir?

Mr. Shurtliff: Between—Councilman Moreau proposed an ordinance, the second plan——

Witness: Yes.

By Mr. Shurtliff:

Q. The change that you just described went to an amendment of his proposed ordinance, did it not? A. Yes sir, I believe that was an amendment, an ordinance.

Judge Waddy: Now did that amendment carry?

[256] Witness: Yes sir, I would again, prefer to have Mr. Eckert answer the details; he drew the lines.

By Mr. Shurtliff:

Q. But as a result of that amendment passing, District E of the second plan is exactly the same as the District E in the first plan? A. It's the same in population, Mr. Shurtliff.

Q. It's the same geographically? A. It is the same geographically.

Q. So the differences you described here a moment ago between the first plan and second plan in your references to differences, affect the difference in statistics, is that not correct, rather than a change in the plan? A. Are you referring to a difference in these two statistics?

Q. Right. A. The population of District E is the same in both plans, Mr. Shurtliff, although, I see——

Jundge Robinson: The difference of one?

Witness: The difference of one, yes sir. That could be the result of a correction in a census figure. Now the voter registration figures show a significant change.

By Mr. Shurtliff:

Q. What caused that change? A. What caused that, Mr. Shurtliff? The difference [257] of voter registration changes mostly, sir. The black voter registration—and I don't have the figures before me—the black voters registration city-wide would have increased since that—since those first figures were—in other words, you are looking at '73 voting figures against '72 voting figures, or voter registration figures. To my knowledge, there have been no change in population figures that one person, Your Honor, I can only say that is something in transcribing because a precinct would contain far more.

Mr. Shurtliff: Geographically, let's just focus on geography——

Judge Robinson: Is this still the same matter, Mr. Shurtliff?

Mr. Shurtliff: Yes sir.

Judge Robinson: Now I thought what you were trying to find out—and you let me know whether I am in error—is whether or not District E had the same configuration in both of the plans submitted to the Attorney General. Is that what you are driving at?

Mr. Shurtliff: Yes.

Judge Robinson: And I understood the witness to answer that question in the affirmative. Is that right, Mr. Pezant?

Witness: Yes sir.

Judge Robinson: What more do you need, Mr. [258] Shurtliff?

Mr. Shurtliff: Any other districts.

Judge Robinson: Very well.

Mr. Shurtliff: Very quickly, which other districts remained the same geographically, and I am trying to avoid the problem of statistics.

Judge Robinson: Very well.

Witness: Sir?

Judge Robinson: What is your question?

By Mr. Shurtliff:

Q. Which districts, A, B, C, D, and E, are the same in the first plan submitted to the Attorney General and in the second plan geographically the same? A. Sir, I guess that three of four of the other districts changed as a result of (1) placing Algiers in District C——

Judge Robinson: Did you say you guess?

Witness: Well, sir, I——

Mr. Stoner: Your Honor, might I just call the Court's attention that the exhibits clearly show that the first A, B, C, and D each changed geographically.

Judge Robinson: I think we might be helped by testimony on it. Let me make this suggestion, we have arrived at the point at which we normally take the recess. Perhaps, it would be well to break. Mr. Pezant, would you during the [259] luncheon period acquaint yourself with whatever data or other information you might feel necessary to answer this question and be prepared to answer the question when we resume.

Witness: Yes, sir.

Judge Robinson: Is that agreeable?

Mr. Shurtliff: That is agreeable, Your Honor.

Judge Robinson: At this point, Marshal, the Court will stand in recess until 1:45.

(Whereupon, the Court recessed at 12:30 p.m.)

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AFTERNOON SESSION

(The three-Judge Court reconvened at 1:49 p.m.)

Judge Robinson: Mr. Shurtliff, there was a question pending. It, perhaps, would be helpful to the witness if you restate the question.

(Witness has resumed the stand)

By Mr. Shurtliff:

Q. Could you, Mr. Pezant, tell us the differences, geographic difference, between the first plan submitted to the

Attorney General and the second plan as to which districts were affected geographically? A. There were three districts affected geographically, A, B and C, to the best of my knowledge, although, you have taken the map down from the wall, have you not. Districts D [260] and E were the same.

Q. Were Districts D and E the same in the other plan submitted to Councilman Moreau at the time you submitted what became the second plan to him? A. No sir, I instructed Mr. Eckert to draw the plans as requested by Councilman Moreau and give him some general supervision, but he drew and gave him some general supervision, but he drew those details and I am not qualified to answer that. I gave overall supervision, but to the best of my knowledge, those districts would have been changed.

One plan included the NAACP plan and another alternate changed three councilmanic districts and one changed two, I believe, and one was the plan that was adopted.

Q. You stated that you gave Mr. Eckert the job of drawing these plans? A. Yes sir.

Q. Did you give him guidelines at that time? A. Yes sir.

Q. And what were the guidelines that you directed specifically to the preparation of those plans? A. Mr. Moreau —Councilman Moreau would like to consider the possibility of the NAACP plan, and perhaps, receive other plans that we thought would be fair and equitable and stand the test of the Attorney General, U.S. [261] Attorney General.

Q. Did you further define for Mc Eckert what you meant by the term "stand the test?" A. No sir, I didn't think I had to. Mr. Eckert had been in this business almost from the very beginning, and he had read the letter that your office sent to the City Attorney and I read that letter.

Q. Mr. Pezant, how many employees do you have on your staff? A. Sir, I supervise eighteen employees, approximately, and as you know, there are constant changes going on.

Q. How many of those employees are black? A. Two of those employees are black.

Q. What positions do they hold? A. We have a black typist, Stenographer II, typist-clerk too, and we have a black man who works for us part-time during the day as a chauffeur and then he works for the United States Postal Department in the afternoon and evenings.

Q. Did either one of those individuals work on drawing redistricting plans? A. Drawing redistricting plans? Miss Zenita Thomas, the typist, certainly—she didn't design the plans, but she certainly typed an awful lot of the plans, and you know, prepared an awful lot of the information.

[262] Q. She did not participate in the drawing of the plans, though? A. No sir. We did have a black administrative analyst for a period of time. I don't know the exact rates; this young man was referred to my office by the Public Employment of the City of New Orleans; that is a federally-funded program; and he was hired by me and spent about three months in my office and he came to me and told me one day that he was happy to have worked for us, but that he had a job in San Francisco which, I believe, paid three or four hundred dollars more than we were able to pay.

Q. How long did he work with you? A. About three months.

Q. What period of time was that? A. Sir, to the best of my knowledge, it was in '71, in the year 1971, but I can't be sure. I am almost positive it was in the year 1971.

Q. Did he work on drawing redistricting plans? A. Yes, he worked on drawing plans, you know, computing information, determining information, making the distinctions.

Judge Robinson: Were they these plans, the plans that are discussed in this case?

Witness: Yes sir, the information associated with those plans. He was a beginning analyst comparable [263] to the position that Mr. Eckert occupied at that time and com-

parable to the position that Mr. Gregory Smith occupied at that time, but they have since been promoted.

By Mr. Shurtliff:

Q. And this was in the period of 1971? A. To the best of my knowledge.

Q. And this was before the third-count census data became available, is that correct? A. I am not sure whether it's before or after, you know, my personnel records would show that; I don't have that information.

Q. Was this during the period you were drawing conceptual plans? A. Yes, I believe it was.

Mr. Shurtliff: I have no further questions.

Thank you, Mr. Pezant.

Judge Robinson: Mr. Halpin.

Cross-Examination

By Mr. Halpin:

Q. Mr. Pezant, I believe you stated that you have a Masters in Political Science and are working on a Doctorate in Political Science? A. Yes sir.

Q. Are you generally familiar with the racial composition of the City of New Orleans and the general location [264] of black and white population concentrations within the City? A. I became familiar with it, sir, when we prepared the intensity maps of population and voter registration. I became quite familiar with it.

Q. From your knowledge—how long have you been working for the City Council? A. Since 1956.

Q. And with your educational background and your long experience in working with elected office holders, is it your testimony that you cannot state to the Court that politicians seek to—seek election and wish to win elections? A. I cannot.

Q. Can you say that?

Mr. Treese: I think I would like to voice an objection, Your Honor, to that. That wasn't my memory of the testimony on direct examination.

Judge Robinson: Well, this is cross-examination.

Mr. Treese: I understand, but the way it was phrased, it sounds like has he testified to that.

Mr. Halpin: That is not what my question——

Judge Robinson: I didn't understand the question that way, but to be clear about it, Mr. Halpin, how about rephrasing the question.

Mr. Halpin: I will rephrase the question.

[265] By Mr. Halpin:

Q. Is it not true that politicians seek to be elected and that is one of their primary goals? A. Well, sir, when a man qualifies for candidacy to political office, I am certain he seeks to be re-elected.

Q. And doesn't it also follow from that that an encumbent politician, an incumbent elected official would ordinarily seek to run in a district from which he would have a good opportunity of being elected? A. You are asking my opinion of that?

Q. Yes. A. Yes sir, I think that would be normal.

Q. And is it not also true that, therefore, it would be to such a politician's advantage to be placed in a district in which no other incumbent on the same legislative body lives? A. Is it to his advantage?

Q. Yes. A. It would be to his advantage, but I think the question overlooks another aspect, Your Honor.

Judge Robinson: You may complete your answer.

Witness: I think the question overlooks the aspect that after a number of years in serving in a particular constituency, there develops some rapport, or knowledge of the needs of the constitutents of that area, too, in addition to [266] the fact of running against another incumbent. And when you place two incumbents in one district, you are in effect removing an incumbent office holder from his constituency that he has served for a period of time, in some cases.

There is one councilman who has been on the Council now for, I believe, eleven and a half years, I believe.

By Mr. Halpin:

Q. Now you stated that you are generally familiar with the racial population and voter registration distribution in the City of New Orleans as per the maps which were introduced, is that correct? A. Yes.

Q. Would you say that in the City of New Orleans from looking at this map which is Plaintiffs' Exhibit 1 (indicating), that the black population in the city is, in fact, concentrated in what is known as the Central City area? A. There is a black concentration in the city area, yes sir.

Q. And that generally, the area referred to as the Lakefront is a concentration of white population? A. Yes sir, with the exception of certain areas like Pontchartrain Park.

Q. Is it not true that Pontchartrain Park is a relatively small black subdivision relative to the rest of what is generally referred to as the Lakefront Area? [267] A. I don't know the population of the Pontchartrain Park, Mr. Halpin, but—I really don't know the population.

Q. But the maps then with Pontchartrain Park on it will indicate the true effect of how large this area is? A. As of 1970.

Q. Now as—From your study of political science, are you generally familiar—do you have a sub-field in public administration in your studies in political science? A. I am inclined to specialize in urban political systems.

Q. For your Ph.D. program, don't you have certain areas, is there any other area besides urban relations as one of the areas? A. Well, some require that I take a varied background. I've taken a course in urban law; I've taken courses in political theory, various courses, but my specialization at this time is in urban political systems.

Q. Okay. Are you familiar with the concept in political science which is sometimes referred to as anticipatory by the bureaucracy, which theory generally is that members of bureaucracies who serve decision-making public

officials tend to anticipate those decisions of the public officials? A. Just repeat the latter part, sir.

Judge Robinson: Would you want the reporter to [268] read it back? Would you want to reframe it, or what?

Mr. Treese: I would object to it. Would you reframe it?

Mr. Halpin: I will reframe it.

By Mr. Halpin:

Q. Are you generally familiar with the theory in political science which is sometimes referred to as anticipatory decision-making by the bureaucracies which theory holds that bureaucrats tend to anticipate the decisions that would be made by the elected officials for whom they work? A. Generally familiar with that theory, but you have only expressed part of that.

Q. Would you care to expand? A. Office holders also indulge in anticipatory behavior in that they sometimes anticipate what their constituents may desire and tend to act in that manner.

Q. Now is it not true that the Council was in your opinion very likely to defeat any plan which contained districts in which more than one incumbent reside? A. That was a possibility, sir, I think I have testified to that.

Q. Do you think that it was only a possibility, or did you fully anticipate that any plan which put two incumbents in one district would be defeated? A. No sir, I did not fully anticipate it as a [269] foregone conclusion that it would be defeated. I anticipated this as a possibiilty.

Q. And therefore, you didn't submit any serious plans to the Council in which more than one incumbent was in any given district, is that correct? A. We did it in the second submission, Mr. Halpin.

Q. But these were defeated, were they not? A. Defeated, sir? Well they were not introduced. There were two of the four plans submitted to Councilman Moreau on the second ground that included two incumbents in

one district. When you say defeated, Mr. Moreau selected one of the four plans. I don't know your definition of defeated.

Q. So your testimony is that Mr. Moreau did not even consider these other plans worthy of being submitted to the Council? A. How can I tell you—well, do you want to say something, Mr. Treese?

Mr. Treese: That's all right.

Witness: (continuing) Mr. Moreau did not tell me that these other plans were not worth their consideration. There were four plans submitted to Mr. Moreau, and he chose one of those plans. He did not tell me what was wrong with the plans, or anything else.

Q. Are you—From your experience, are you generally aware of where each of these seven incumbent [270] Councilmen live? A. Yes, I am.

Q. Are you specifically aware of their addresses? A. Sir, not their street addresses, but I am generally familiar in the precincts in which they live.

Q. And you did take that into consideration in drawing the plans? A. Yes sir.

Mr. Halpin: Just a moment (addressing one of counsel seated at Defendants' table). Do you have the map?

May it please the Court, if I could ask the witness to step down since the map is at a low level.

Judge Robinson: Very well. (addressing witness) Step down.

(Witness withdrew from the stand and approached the board.)

Judge Robinson: Are you going to have this marked?

Mr. Halpin: They are not introduced in the testimony yet.

Judge Robinson: Well, why not just mark them for identification so the record will be clear?

Mr. Shurtliff: May Your Honor please, they are marked, we have not introduced them. They are Defendants' Exhibits.

[271] Judge Waddy: Have they been marked for identification?

Mr. Shurtliff: They have, Your Honor.

Judge Waddy: The top page has not been marked.

Mr. Halpin: Well why don't we introduce the overlay map——

Judge Robinson: First, let's get it marked. What is your pleasure with reference to an identifying symbol? You said that you had done something, Mr. Shurtliff, to identify it. Do you have a letter, number or something?

Mr. Halpin: As I understand it, Your Honor, the overlay which I am seeking to introduce has not been numbered, and we would like to number that Defendants-Intervenors Number 1.

Judge Robinson: All right. Very well.

Deputy Clerk: Defendants-Intervenors Number 1 marked for identification.

(Defendants-Intervenors Number 1 was so marked for identification)

By Mr. Halpin:

Q. Mr. Pezant, I refer you to an overlay of the standard ward-precinct map of the City of New Orleans (indicating) which has been labeled for identification Defendants-Intervenors Number 1. Does that overlay generally accurately represent the residence of the present incumbent [272] members of the City Council? A. (Examining the exhibit) Sir, you say generally accurately?

Q. Yes. A. To the best of my knowledge, this does depict the residences of the incumbent City Councilmen.

Q. And the—— A. Although I understand Councilman Lambert might recently have been changed.

Q. Now it is true that all the present incumbents on the City Council are white, is that not correct? A. Yes sir.

Q. And now is it not true that in order to place each of the five incumbents who are presently elected from

districts into different districts, it is easier to accomplish this by drawing districts vertically, that is, from the River to the Lake? A. Is it easier to——?

Q. Place them in separate districts by drawing the districts in a vertical fashion from the River to the Lake? A. To a great extent it is, except down here (indicating), sir,——

Q. You are refer to Councilman Sapir's residence which is the only councilman which lies in the southern part of the city? [273] A. These (indicating) traditional lines don't go to the Lake.

Q. Now is it not true, Mr. Pezant——

(Witness resumed the stand)

Q. (Continuing)—Is it not true, Mr. Pezant, that the primary reason for drawing these district lines from the River to the Lake was to assure that each of these five incumbent Councilmen elected from districts would be in a different district? A. No sir, I said before it is not the primary reason; it was one of the considerations, insofar as it did not contravene the other considerations.

Q. And those other consideration factors? A. The population factors, the natural boundaries, the historic boundaries, and the question of dilution of minority voting.

Q. Now is it not also true that what you have said about where black population is located in New Orleans, and this is demonstrated by the maps and data in evidence, that most frequently if you draw lines in a vertical fashion from the River to the Lake, you are going to dilute black voting strength? A. If you draw lines from the River to the Lake, did you say the result is a dilution of black voting strength?

Q. That is the question. A. Not necessarily, Mr. Halpin (repeating), not [274] necessarily.

Judge Robinson: I thought your question inquired as to whether this was ordinarily the consequence?

Mr. Halpin: Yes.

Judge Robinson: Well, Mr. Halpin——

By Mr. Halpin:

Q. Would it ordinarily be the consequence when you draw districts vertically from the River to the Lake to create districts in which there is a white majority? A. I don't know if that is true or not.

Q. You do know where the population, black and white, is located within the city, though, don't you? A. Yes, I do from that map.

Q. And it is true that the plan you draw and which is before the Court today, in fact, does have that result of having—most four of these districts having a white majority, is that not true? A. Only three of the districts have a white majority.

Q. White voter registration majority? A. Only four of the districts do have a white voter registration majority, but I——

Q. Do you——

Judge Robinson: Let the witness finish.

Witness: You are overlooking a very important fact, Mr. Halpin, that—and we have—I have looked at [275] the age districts of the City of New Orleans, and the black population is very young in the City of New Orleans.

Judge Robinson: Is very what?

Witness: Sir?

Judge Robinson: I didn't get one word. You said the black population is very——?

Witness: Very young, young compared to the white population, Your Honor. There are statistics available from the 1970 Decennial Census which would show this.

By Mr. Halpin:

Q. Is it not also true along that line, Mr. Pezant, that there has also been a long history of discrimination against blacks in voting registration in New Orleans? A. Sir, I am not familiar with the operation of the Voter Registrar's Office in the City of New Orleans. I have never had anything to do with that office.

Q. You have lived in New Orleans, however, and worked for the Council since 1959, was it? A. I have lived all my life in New Orleans.

Q. And you are not familiar with the various lawsuits and complaints that were raised about blacks not being allowed to vote in New Orleans through their precincts, and so on? A. Sir, I have read this in newspapers, and things of this nature, but I have never looked into the operations [276] of voter registration. I have generally read this information that you are referring to.

Q. Now did you draw any plans for submission to the City Council or for any other purpose which plans were not drawn, the district lines, were not drawn in a vertical River-to-Lake fashion? A. Generally? You said, "generally drawn in a River-to-Lake fashion?

Q. Yes. A. I didn't draw any plans in—That was strictly east-west, and the only time that word ever came up was in the second rejection of the Attorney General, Mr. Halpin.

The first letter that we received from the Attorney General failed to mention any east-west lines.

Q. It did talk about dilution of black voting strength, though, didn't it? A. It talks about the dilution of black voting strength.

Q. Did you at any point, even after the second letter of objection, that is, the letter objecting to the plan in question today, attempt to draw a plan with lines in an east-west fashion, or at least not in a north-south fashion? A. Mr. Halpin, the second plan was rejected in May of 1973, and upon that rejection, the City Council met and considered the possibility of a court action and there is [277] no need to draw any more plans when you are making an attempt to have the plan that was adopted validated.

Q. Is it not also true that if you did draw plans, say, in an east-west fashion, that it is quite likely that all but one of the present Councilmen could be located in the

same district? A. If you set out to do that deliberately, Mr. Halpin, you could possibly do it.

Q. I am asking that wouldn't that be the ordinary result of using an east-west fashion of drawing district lines? A. That all but one of the Councilmen would be included in one councilmanic district? I wouldn't consider that to be an ordinary result; it might be a result that two incumbent councilmen would be in one district. If you are referring to the councilmen-at-large, it doesn't make any difference what districts they are in.

Q. But given the location of the residences of the councilmen-at-large, is it not true that of the seven members, it would be quite likely drawing lines either east or west, or in a perfectly compact square pattern, that four of those people would fall into a single district? A. If you are including the two councilmen-at-large, it's possible.

Q. Isn't it likely? [278] A. It is likely.

Q. But if you draw lines north to south in the fashion that you did, you can avoid putting more than one councilman in a district, is that correct? A. You can also draw north-south lines that include two councilmen in one district.

Q. From your knowledge of the topography of the City of New Orleans, wasn't it obvious to you that when you drew these district lines in a north-south River-to-Lake direction that you were most likely to come up with districts which had a white voter registration majority? A. That you would most likely come up with a—sir, the voter registration, as I recall the last figures, the voter registration percentages in New Orleans are thirty-five to thirty-six percent black of the total voter registration. Now I don't think it necessarily follows that you drawing district lines north to south insures that you will have black minorities in each district because there is a minority in the whole city of only thirty-six percent.

Q. Is it not true that in your words, you would have to make a considerable effort to create black majority dis-

tricts if you did it in a north-south fashion? A. You would have to make a considerable effort to——

Mr. Treese: Your Honor, again, I must object. [279] I don't recall the witness in his words having——

Judge Robinson: Mr. Treese, before I can rule on your question, I have to understand what the question is. Restate the question just for my edification.

Mr. Halpin: I can restate it without that part, Mr. Treese. Without the part Mr. Treese found objection to.

Judge Robinson: Don't answer the question until I instruct you one way or the other.

Mr. Halpin: The question is, wouldn't you have to make a considerable effort in drawing lines north-south to result in any district having a black voter registration majority?

Judge Robinson: I have the question, and the objection, Mr. Treese?

Mr. Treese: As reframed, it is fine.

Judge Robinson: Very well. (Addressing witness) You may answer it.

Witness: Well, sir, in drawing north-south lines, you definitely can and it would result in a creation of a distinctly black district in District B. I am following traditional ward lines.

Now we talked before about the population of New Orleans being to a great extent integrated. I didn't have any preoccupation with race that you seem to think that I had when we set about to draw these lines.

[280] Mr. Halpin: I don't believe that is the question.

Judge Robinson: Let's make the question more specific.

Mr. Halpin: The question is, don't you have to make a considerable effort in drawing north-south lines—I will ask it this way this time—to create more than one majority black district by voter registration?

Witness: You would have to make a considerable effort. You——

By Mr. Halpin:

Q. Now you indicated on—that Mr. Salatich, the Assistant City Attorney, supplied you with a digest of criteria which would prevent dilution of black voting strength, is that correct?

Mr. Treese: Again, I must object, I don't recall the testimony of this witness using the word "criteria", "digest", or any of those words.

Mr. Halpin: I will ask the question whether that is true, not whether what he stated before.

Judge Robinson: Well now, just a moment. Mr. Pezant, do you understand the question?

Witness: Yes, I understand the question.

Judge Robinson: You may answer it.

Witness: Mr. Salatich presented me with certain [281] material that he thought was pertinent to our redistricting effort, and it contained what I thought were guidelines of the U.S. Attorney General's Office, but apparently, they were some sort of rules for considering redistricting efforts, or reapportionment efforts. I studied those rules; I also received from Mr. Salatich some decisions, I believe, in the case of Judge West in the Eastern District of Louisiana, and to the best of my understanding, Mr. Halpin, that the procedure was to go about the business of redistricting and to be careful that the results of the efforts did not dilute black votes, but I also understood that there was no need for a conscious effort to deliberately draw black districts.

Q. Okay. You stated that one of the things that was available to you which you followed as a criteria—strike that. Is the import of what you just said, that one of the criteria that you followed was Judge West's decision? A. I just said that that was one of the—part of the material submitted to me.

Q. Are you not aware that in Judge West's decision, he states that—relative to the Louisiana Legislature, that it was these traditional boundaries which resulted in only two black legislators being elected this century and that one succeeded the other, to the effect that these traditional

boundaries did not balance out against such dilution of voting strength?

[282] Judge Robinson: Just one moment, Mr. Pezant.

Mr. Treese: I would like to object to the form of that question. Either we read from the opinion, or we have Judge West here, who said it; but for the synopsis presented by counsel, I don't think it's fair to summarize to this witness that way. I don't think it's the best evidence of what was said in that decision.

Judge Robinson: Well——

Mr. Treese: And I object for that reason.

Judge Robinson: I took it that Mr. Halpin's effort was to identify for the witness the portion or portions of the opinion to which his question was related. Am I correct?

Mr. Halpin: That's correct, Your Honor,——

Judge Robinson: But I am not certain that the witness understood it (addressing witness). Did you understand the question?

Witness: Yes, sir, I understand it, but I wasn't familiar with all of the decisions, Your Honor.

Judge Robinson: Doesn't that take care of your objection, Mr. Treese?

Mr. Treese: Fine, Your Honor.

Judge Robinson: Very well.

Judge Waddy: The question was whether you were familiar with it.

[283] Witness: No sir, I am not familiar with the entire decision.

By Mr. Halpin:

Q. So you did not carefully read that decision in order to determine how to avoid diluting black voting strength in New Orleans, did you, Mr. Pezant? A. I did not read that entire decision, no sir, Mr. Halpin.

Q. What part of the decision were you reading and following? A. May I refer to—or is it available—may I refer to the material that I received from Mr. Salatich? I don't know how handy it is, the availability of it.

Judge Robinson: Gentlemen, let's see if that is——

Mr. Treese: Could you describe it? I don't know what——

Judge Robinson: (Addressing witness) You may leave the witness stand if you can help identify it.

Witness: Sir, my problem is I don't know whether it's in this material, or in some material that my staff has in the other room. But I definitely recall receiving several pages of material from Mr. Saaltich that contained information from Judge West.

[284] By Mr. Halpin:

Q. If I might ask the question this way, to address the Court, I am more interested in Mr. Pezant's perceptions of what stood out to him in this decision than the actual material that he used. The question will stand as what is your perception and your understanding of that decision and the parts of it that you followed?

Mr. Treese: Well, Your Honor, may I be heard on this?

Judge Robinson: Yes. sir.

Mr. Treese: I think the witness already indicated that he would prefer to use the documents that were present at the time.

Judge Robinson: I am going to let him do that.

Mr. Treese: Thank you, Your Honor.

Judge Robinson: Let's see what we can do now——

Mr. Treese: Thank you.

Judge Robinson: —to——

Mr. Halpin: If it would convenience the Court, I could go on to another line of questions while someone finds the material.

Judge Robinson: I think it would be helpful to do so, and the first opportunity we will let you get back to this.

Mr. Halpin: All right, I will proceed to another [285] line of questioning.

Judge Robinson: While we are on this, at the first opportunity, Mr. Pezant, would you give those present here and you mentioned some associates outside of the courtroom in the witness room such assistance as you can to

get the information that you said you wanted to consult. The Court is going to permit you to use that for whatever purpose it may have in refereshing your recollection for the purpose of answering Mr. Halpin's question, or questions on that score.

Witness: Thank you, Your Honor. I would ask Mr. Albert Levey to check with Mr. Jon Eckert for that materiaal if it's not on the desk.

By Mr. Halpin:

Q. Mr. Pezant, relative to your staff, you indicated that there was a black clerk-typist employed by your staff, is that correct? A. Yes sir.

Q. Do you recall approximately the date on which he or she was hired? A. Sir, she would have come into my office, as I recall, in the year 1971, but we do have, you know, we do have personnel changes in my office and I will say to the best of my memory, 1971.

Q Now when there are three individuals who are qualified under Civil Service for a position on your staff, [286] who makes the decision as to which of the three will be hired? A. I do as the appointing authority, Mr. Halpin.

Q. And that decision does not go to the Council? A. The City Council could presumably interenve if they chose to do so inasmuch as they appointed me. They presumably chose to intervent, but I am appointed by them as the Director and I make the staff appointments.

Judge Waddy: Are you appointed from among three, also?

Witness: Yes sir, I am.

Judge Waddy: You are?

Witness: Yes sir.

By Mr. Halpin:

Q. And that selection, presumably, is made directly by the Council? A. By a majority of the Council.

Q. Now you indicated in your—strike that. Is it not true that many of the canals in New Orleans run east to west? A. I know of one or two canals that run east to west, Mr. Halpin.

Q. And is it not true in your earlier testimony you stated that only two canals run north-south? A. Two canals, sir? I thought I depicted each canal than ran north-south, and——

[287] Judge Robinson: He depicted more than two running north and south.

By Mr. Halpin:

Q. Would you—with respect to the canals which run north-south, do those canals also form ward lines in any instance, to your knowledge? A. In one instance, I pointed out the People's Avenue Canal formed a ward boundary. In another case, I pointed out that the Seventeenth Street Canal on the extreme west of the city, not only formed a ward boundary, but formed a parish boundary.

Q. Formed a city boundary? A. Yes, the City of New Orleans, yes, sir.

Q. Now is it not also true that there are many corridors which run essentially east-west in New Orleans, such as St. Charles Avenue, Claiborne Avenue, and so on? A. Mr. Halpin, St. Charles Avenue and Claiborne Avenue not only run east-west, they run north-south.

Q. They generally, do they not—— A. They follow the curvature of the Mississippi River.

Q. Follow the contour of the River as opposed to running from River-to-Lake? A. Some of those avenues, yes.

Q. Now is it your testimony that there is not a [288] single public official in New Orleans whose election district is coterminous with any single ward in the City of New Orleans? A. Once more, Mr. Halpin?

Q. (Repeating) Is it your testimony that there is not a single elected public official in the City of New Orleans whose election district is coterminous with a single ward?

A. Mr. Halpin, if I understand your question correctly, the Councilmanic Ward Nine is in a single ward. There is not an elected official whose district is coterminous with a single ward? There are—The Councilman from District E, at present that district is a single ward, whereas the Councilman from District D has several wards.

Q. Besides those Councilmanic Districts, the two that you referred to, is there any other public official who's in the City of New Orleans whose district is coterminous with a single ward that you know of? A. Not that I know of, unless you consider parish committmen as public officials.

Judge Robinson: Would you hold just a moment.

(The Judge conferred privately off the record)

Judge Robinson: I will ask you to indulge me for just a moment.

(Judge Robinson making an annoucement in open court)

[289] Without identifying anyone in the courtroom, let me give warning on behalf of the Court that persons who are not on the witness stand are not to do anything, to say anything, to indicate by any sign, symbol, or in any other shape or form, anything that might serve as an indication of any answer to a question being put to the witness. I think it is only necessary for the Court to make that announcement, and I hope that it will not happen again.

Now would you repeat your question?

Mr. Halpin: I have no further questions of this witness, except the question which I put to him before which the Court indicated it would allow him to examine his materials on.

Judge Robinson: All right. Well, what is the situation with references to the materials? Are they in the courtroom?

Mr. Stoner: Your Honor, we have not located the papers. My law clerk has gone to find Mr. Eckert.

Judge Robinson: Well, Mr. Stoner, let's leave it that way. Would it be all right—is there going to be redirect examination of this witness?

Mr. Treese: Yes, I have two questions.

Judge Robinson: Well, let's go ahead with those two questions and maybe by that time the papers will be back. Is that agreeable to you, Mr. Halpin?

[290] Mr. Halpin: Yes.

Redirect Examination

By Mr. Treese:

Q. Mr. Pezant, two lines of inquiry, perhaps, I should have said.

Mr. Pezant, you have indicated that you are familiar with the letters from the Attorney General interposing an objection to the proposed plan from the City of New Orleans. You have read those letters, is that correct? A. Yes.

Q. All right, and I believe you have also indicated that it was in the second letter, the letter dealing with the plan that is before the Court now——? A. Yes sir.

Q. —that they raised for the first time their objection based on vertical districting, north-south districting, is that correct? A. Yes sir, to the best of my knowledge, the first letter had no indication of any objection of vertical lines, nor any suggestion of east-west lines.

Q. Very well. Now, to the best of your knowledge, did any party, any representative group, anyone else propose a plan or an ordinance in conection with the redistricting for the City of New Orleans which described east-west redistricting as opposed to vertical districting? [291] A. The only plan that would have had some semblance of an east-west configuration, Mr. Treese, might have been the Republican plan—I don't know if that was submitted in evidence—and then again, I think that was only in one district, sir, to the best of my knowledge.

Q. Would you be able to tell the Court, Mr. Pezant, or would you be able to give the Court an estimate of the number of man hours expended by you and your staff in preparation of redistricting plans up to the present time? A. Sir, it would—in man hours on my staff including public hearings, and everything, it seems to me it would approach 1,000 man hours.

Mr. Treese: Very well. I have no further questions, Your Honor.

Judge Robinson: We still don't have the papers?

Mr. Stoner: No, Your Honor.

Judge Robinson: I have one or two questions that I would like to put to the witness. Suppose I go ahead and do that.

Judge Waddy: Before you do that—Mr. Treese——

Mr. Treese: Yes, Your Honor.

Judge Waddy: —Is there anyone who could get this information while Judge Robinson is asking these questions?

Judge Robinson: I thought someone had left with [292] that purpose?

Mr. Treese: Yes, our law clerk is out there now with Mr. Eckert, and they are trying to go through the papers right now. Mr. Stoner will assist.

Judge Waddy: Very well.

Judge Robinson: During your testimony, Mr. Pezant, you stated—perhaps on more than one occasion—you made a conscious and a conscientious effort to do anything in the way of resetting these district lines that might dilute the black vote. Also during the course of your testimony, you cited as an example of one such effort, the situation in the upper part of District E where there were the two communities with approximately equal registered voting strength——

Witness: Yes.

Judge Robinson: —moved from one to the other in order, as I understood your testimony, at least in your view, not to result in any diminution of the black vote

insofar as that district is concerned. Am I correct up to this point?

Witness: Yes sir.

Judge Robinson: What other effort or efforts did you make in formulating either or both of the two plans that were approved by the City Council that were from your viewpoint calculated not to dilute the black vote?

Witness: Your Honor, in what is proposed District B,B"B" as in "boy", we were very careful not to draw [293] any lines either east-west or north-south through the center of that proposed district inasmuch as District B contains what our staff considers the greatest potential for a black councilmanic district in the City of New Orleans. It's called the Central City area. It has in addition to a number of houses owned by blacks, it has several public housing projects that contain mostly black population. We at no time on the staff considered any division of that general neighborhood, general area; on the other hand, in the area to the east of the city, there is a very large housing project inhabited mostly by black people——

Judge Robinson: In which direction?

Witness: District E, Your Honor. I mentioned the northern section of District E that we considered changing; I mentioned the southern section that we proposed and in the middle of that District E as it adjoins District E, there is a very large housing project we call the Desire Housing Project, we were very careful not to draw any lines through that area either east-west, or north-south to in any way dissect the potential of black voting strength in that area, sir.

Judge Robinson: Well, if I understand your testimony correctly, and you let me know if I am in error, your efforts in this regard really fell into two categories; (1) if you were actually going to move a line dividing two districts, you were careful that in the movement of the line, [294] the same—a balance would be maintained between black and white votes on whatever was moved from the one district to the other, is that correct?

Witness: That's one consideration, yes.

Judge Robinson: The other is, you were careful not to draw any lines, any dissecting lines, that would run through a substantially black community?

Witness: Yes sir, and I might mention one more factor.

Judge Robinson: Is that fair?

Witness: Yes sir.

Judge Robinson: All right.

Witness: And I might——

Judge Robinson: I'm sorry. Go ahead.

Witness: I might mention one more factor, if we had taken the Desire Housing Project and removed it from District E and placed it in with District D, we would have seriously diluted that black population because a large percentage of the Eighth Ward of the City of New Orleans which is right adjacent to it, the Eighth Ward has a high percentage of white population and registration; that would have had an effect of dilution, Your Honor.

Judge Robinson: Very well, thank you very much.

Do we have the papers?

Mr. Treese: I am informed that the papers were [295] turned over to Mr. Pezant by Mr. Eckert, and he will have to pick them out of the other documents.

Witness: They are in the briefcase.

Judge Robinson: Well, why don't we excuse Mr. Pezant from the stand at this time.

Judge Waddy: Why don't we take our afternoon recess at this time while he's going after it?

Judge Robinson: Let the plaintiffs call the next witness, and at some convenient time we will interrupt and put him back on the stand.

(Addressing witness) Very well, you are excused subject to further call.

Witness: Yes, your Honor.

(Witness withdraw from the stand and exited the courtroom)

Judge Robinson: Mr. Treese, Mr. Stoner, call your next witness.

Mr. Stoner: Yes, we will call as the next witness Councilman Moreau.

Whereupon,

James A. Moreau

took the stand, and being duly sworn, was examined and testified as follows:

[296] Direct Examination

By Mr. Stoner:

Q. Would you please state your name and address for the Court? A. James A. Moreau (spelling out) M-o-r-e-a-u, 6308 Pratt (spelling out) P-r-a-t-t Drive, New Orleans, Louisiana.

Q. Mr. Moreau, what is your occupation? A. I am a businessman and a Councilman-at-Large.

Q. And you are a Councilman-at-Large in the City of New Orleans at the present time? A. Yes sir.

Q. And when were you elected to that position? A. In 1969 I took office, in 1969. I took office in '70.

Q. Now what is your background with respect to the City of New Orleans, are you a native of New Orleans?

A. Yes, I was born and raised in New Orleans and went to school in New Orleans.

Q. Have you lived there all your life? A. Except when I was in the military.

Q. When was that? A. I was in the military in World War II for six years, and again during the Korean War for approximately—on active duty for about ten years.

[297] And do you hold a position in the military? A. Colonel in the Marine Corps Reserves to this date.

Q. And how long have you been on the City Council of New Orleans? A. I have been on there four years as a District Councilman and three years as a Councilman-at-Large; prior to that, I spent two years in the State Legislature.

Q. Directing your attention to the matters before the Court, did there come a time when you introduced what we have referred to in this case as the first plan of redistricting the City of New Orleans? A. Yes, I did introduce that plan, sir.

Q. And approximately when was that introduced, do you recall? A. That was introduced about March of '72, sir.

Q. And did there come a time when another plan was introduced by you to the City Council for the redistricting? A. Yes, sir, it was introduced I think in December of '72.

Q. And that is the plan that has been referred to as the second plan? A. Yes, sir, that is the second plan, sir.

Q. And then the plan that is before the Court? A. Yes sir.

[298] Q. Now could you tell the Court the circumstances surrounding the introduction of the second plan? A. Well sir, if I may go back, I wrote to the Census Bureau by registered mail requesting that the Census data be made available to us as early as possible, based on the history of what happened in 1961, this matter was contested in court, and I anticipated this happening again. The figures were delayed in getting to us.

When they did arrive, I asked the Council research staff to prepare a plan, which was the first plan which was prepared. That plan was introduced and at the time that I concurred in that plan, they had two District Councilmen in Algiers and of course Algiers was also represented by the two Councilman-at-Large. This would give Algiers, in my opinion, four Councilmen who would represent them in the main problems with the bridge situation.

This plan was greatly amended when it came up before the City Council after public hearings. I voted for the plan in order to get the plan on the record because we had a deadline of April '72 to redistrict ourselves in accordance with the City Charter.

At that time I made a statement that was printed in the newspapers that I did not think that this plan would hold up in court; I didn't think it would meet the requirements, and I wrote to Mr. Chapital, the head of the local NAACP, [299] requesting his assistance in drafting a plan which we would consider, which eventually became to be known as the second plan. Mr. Chapital replied to me that he appreciated being brought into the matter, but he thought that the plan which had been submitted was sufficient, and he didn't care to discuss the matter further. I thanked him for his thoughts——

Q. Now the plan that you referred to as having been submitted to the NAACP is Plaintiffs' Exhibit Number 15, is that correct? A. Yes sir, that appears to be the plan, yes sir.

Q. How did you make any other request of anyone concerning the possibility of plans of redistricting? A. Yes sir. I spoke to Mr. Jon Eckert who, I think, was designated as the principal man on the Council research staff to draw these plans, to come up with several plans, including the NAACP plan, and I specifically cautioned him that I did not want the voter statistics; I only wanted population statistics, because according to the City Charter, we are required to redistrict by population and not by voter strength.

Q. Did there come a time when the Council research staff did submit to you plans for the redistricting? A. Yes sir, they submitted four plans to me for redistricting, and I selected the one which we now have, and after the plan was introduced, then I asked for the voter strength. [300] And incidentally, I would like to state this for the record, at the time that I requested Mr. Eckert to draw up the plans, I told him to draw up the plans regardless to where the district councilman lived, and I believe that that was the instructions that he understood.

Then after the plan was submitted to me and I noticed that he did not have any of the councilmen conflicting, I

said to him that I was glad, I'm glad that the plan we selected did not have any councilman conflict because it is a well-known fact that the vote very often under state council law would be six-to-one, more would be in the minority and six would be in the majority. And I did not want any of the councilmen to think—personally we are friends, politically we are not—I didn't want any of them to think I was trying to get one councilman or another councilman by putting two of them in the same district.

Q. Now returning to 1971 at the time you first started this redistricting, did you hold any position in the City Council? A. Oh yes, I was Council President.

Q. And you felt it your obligation as Council President to initiate and keep moving a redistricting paln, is that correct? A. Yes sir.

Q. And on that basis you made the request for the [301] submission of the—— A. In '71, I made the request to the Bureau of Census with a registered letter, with copies to our local congressional delegation, requesting the Bureau of Census to expedite the material to us, and then, of course, the information was not received until '72, and at that time I asked that the plan be prepared.

Q. How do you believe that the second plan, the plan that is before the Court, is a fair plan for the redistricting for the City of New Orleans? A. Your Honors, I will stand up for that plan morally, equitably, and before God as being honest in my sincere beilef, that it is a good plan; it's not intended to dilute either the white or the black voter population of this city. I said it publicly and I have said it time and time again, that I believe that I really believe that the only time this country can achieve the greatness that it can achieve is when we no longer have a black voter or a white voter, but American voters, which we all are. And sir, I have served in two wars with the hope that we could maintain and achieve that goal.

To answer your question, yes, I deeply believe in that plan.

Mr. Stoner: I have no further questions of this witness. [302] Judge Robinson: Any cross-examination of this witness?

Cross-Examination

By Mr. Shurtliff:

Q. Councilman Moreau, you introduced the first proposed ordinance dealing with redistricting, is that correct, sir? A. Yes, sir, I did.

Q. And did you introduce the amendments to that? A. No, sir, I did not, but I was an author of the amendments after they were introduced.

Q. Pardon? I didn't get your answer. A. I did not introduce the amendments, but I voted for them. I voted for them after they were introduced.

Q. And did you vote for—you voted for the amendments and then you voted for the bill or final passage? A. Yes, I voted for them as amended on final passage.

Q. You were also the sponsor of the plan that became the second? A. Yes, sir.

Q. All right . . . A. In fact, I rather claim to be the sponsor of the first by choice, the second by necessity because of the time limitation we had to get an ordinance before the City Council and a vote—I mean the Attorney General.

[303] Q. You believe the second plan to be a better plan than the first plan? A. Positively.

Q. Why do you hold that judgment, sir? A. Well, you see, the first plan came up and replaced three district councilmen in Algiers which the people of Algiers opposed. The next thing is District A still included the major portion of Algiers. Therefore, I believe that when we were just reliving a problem which has been stated many, many times in the city that District A on the western part of New Orleans is not compatible with District A, known as Algiers.

Q. How about from a racial point of view, do you consider one of the plans to be better or worse than the other,

what is your judgment along those lines? A. Sir, I have to state honestly that I have not considered race an issue in any of these plans. I only asked for the voter statistics after the plan was introduced. All I was interested in was population statistics in order that we would carry out the provisions of the charter which required that we redistrict ourselves about five districts equal by population.

Q. Were those population statistics provided to you at that time? A. Yes, sir, the population statistics were provided [304] to me at the time and not the voter statistics.

Q. Were the population statistics provided to you by race, sir? A. Yes, sir. Amended to the plan that came to me was the population by each district, and without my request they had attached to it the black percentage of the population by district, not by voters.

Q. You are talking about the second plan? A. Yes, sir, the second plan—the second plan, I'm sorry. The first plan . . .

Q. At that time you received the four plans from Mr. Eckert? A. The first time, I don't know what I received because frankly I was not interested in that plan too much. The second one was the one I was interested in, and when I asked—to reclarify this, I almost lost myself—when I askd for the population statistics, they did put on there the black population, but by population only, not by voters.

Q. You testified that you asked Mr. Chapital to assist you in drafting a plan? A. Yes, sir.

Q. When was that, sir? A. I think it was shortly after—I have the letter with me, if you would care to refresh my memory on it, I could get it—it was shortly after the first plan was [305] adopted. I was well aware of the fact that this plan would be contested in court because it was stated by various people that they would contest it, no matter when it came up, they would contest it in court, and I wrote Mr. Chapital inviting—I would say sometime, maybe March, or something of that sort—I could get the file if you wanted to get the exact date if that is critical—

and Mr. Chapital replied back, who was then president of the NAACP in New Orleans, that they felt that the new plan was compatible with the NAACP Plan because—incidentally, I asked him to meet with me and members of the council research staff, and a representative of the NAACP and he replied back that he didn't think that any further discussion of the matter would serve any purpose because he felt that the NAACP Plan was the plan.

I replied to him that I appreciated his viewpoint and to go ahead and start drafting what is now known as the second plan.

Q. But at the time you wrote him a letter, you already had a plan proposed by his organization? A. Oh, yes, sir, for both—I beg your pardon, I was anticipating your question, sir.

Your question was when I wrote to him we had a plan already prepared by his office, his organization? Yes, sir, we did, sir.

Q. What was the purpose of your letter? [306] A. The purpose of his letter——

Q. No, your letter. A. The purpose of our letter is that I did not agree with certain parts of his plan and to get together with Mr. Chapital and the council research staff and let them come up to see where we could compromise.

Frankly, I believe that the method in designing a plan to cover the City of New Orleans is to start on the eastern boundary, that's "E", and get a hundred and eighteen thousand voters; start on the western boundary and get a hundred and eighteen thousand voters; then take the one in the middle which happens to be "C" and get your hundrd and eighteen thousand voters out of that, and then get "B" and "D" to bring in a hundred and eighteen thousand voters, and that is my idea how to design the plan, but I gave no one those instructions.

Q. Why did you not given anyone those instructions? A. Because I wanted the council research staff to be free to move in the directions that they thought they should move according to the guidelines cited by the Attorney General's Office and by the city charter.

Q. Did you give them any guidelines? A. Yes, sir, I told them I wanted a plan drawn up that would meet the provisions of the Attorney General's instructions, the Civil Rights Act, the City Charter which [307] required division by populations, that I wanted no regard made to any racial voter strength, and I didn't care whether it brought one or two or more councilment against one another.

Q. And this was in reference to the second? A. The second plan, yes, sir.

Q. And you received from Mr. Eckert four plans? A. I did, sir.

Q. You testified at one point, after you received the plans that you told Mr. Eckert that you were glad or happy that it didn't place any two incumbents councilmen in the same districts, did I understand you correctly? A. Yes, sir, I did, because here's the point. Many times I have had, I'd say political arguments, before the City Council with other members of the Council and disagreed with them and I felt that if I came up with a plan that pitted two of them against one another, or three of them against one another, they would say I was deliberately trying to eliminate one of them from the re-election, and that is the only reason why.

But frankly, I could care less about whether it brought two against them or not.

Q. When did you make this statement to Mr. Eckert? A. After I selected this plan.

Q. And you selected that plan among four plans he had given to you? [308] A. Yes, sir.

Q. And did any of the other three plans place any—place two or more incumbents in the same district? A. I believe the NAACP plan placed two incumbents in one district, and I believe one of the other plans placed—Mr. Stoner?

Q. Mr. Shurtliff. A. . . . Mr. Shurtliff, believe me, like Mr. Beer, I could care less.

Q. But you had four plans, did you not, that had been provided to you by Mr. Eckert? A. Yes, sir.

Q. For proposals? A. Four proposals.

Q. And you selected the proposal which you wished to have introduced as an ordinance, did you not? A. Yes, sir.

Q. Did Mr. Eckert select one of the four? A. No, sir, I selected it.

Q. So you are the one who selected the plan that didn't place two or more councilmen in the same district? A. Yes, sir.

Q. Was there a reason you selected that plan over the other three? A. Yes, and I will be glad to explain it to you if [309] you care to, sir.

Q. If you would, please? A. All right, sir.

Judge Robinson: Did you need something?

Witness: I think—if not, I have it here. I have a copy of it.

By Mr. Shurtliff:

Q. All right, sir . . .

Judge Waddy: You want to go down to the board?

Witness: Yes, sir, if I may.

Judge Robinson: You may do so.

(Witness withdrew from the stand and approached the board.)

Witness: First of all, it is my opinion the people who reside in this area (indicating), the people who reside in this area (indicating), the people who reside in this area, more or less are the same type of strata of life, as you say—and incidentally, you do have blacks in this area. I live out on the Lakefront and I have a black doctor who is a neighbor of mine.

All right, the next thing is, your problem of your riverfront. This is your riverfront here (indicating) your main part of the riverfront, your main part of the riverfront is here (indicating). This is your central business district (indicating). This is your business district of Old Algiers. Therefore, by keeping C and C together, you kept [310] this thing here, this part here (indicating) from passing.

The next thing is on the NAACP Plan . . .

Judge Robinson: I think you will have to . . .

Judge Waddy: That's the one just above that.

Witness: Well, that's all right, I can explain it. The NAACP Plan came across and cut out the River entirely from District E. Now the river is—well, it's our largest source of income; therefore if you took from the riverfront out of District E, when this gentleman or lady who represented District E in the future, would be inclined to disregard the needs of the riverfront. Therefore, this is one reason why I didn't like this particular phase of the NAACP Plan because not only it didn't keep up with the so-called geographical lines, but it did come over and eliminate the riverfront from District E. And that is the reason why I chose this one over the other.

Mr. Shurtliff: Thank you.

By Mr. Shurtliff:

Q. So I understand it, under the plan that you chose each districts fronts on the river, is that correct? A. Yes, sir, at least it has a bearing. I think it's been explained that this is know as the front of New Orleans.

It is interesting to note, by the way,—may I point out the Court—that Ward One and Two is here (indicating) [311] Three and Four, Five, Six and Seven are on this direction (indicating) and then you come back to Nine and pick up Ten, Eleven, Twelve, this way (indicating).

In other words, when our city was drawn, it was 1-2, (indicating) and then you bounce back to 3, 4, because one and two are on the western side of Canal Street and Three and Four are on the eastern side of Canal Street (indicating) and that's when you pick up Five, Six, Seven, Eight, Nine on this—no, I beg your pardon—One, Two, Three, Four, Five are on this side (indicating); then Six, Seven, Eight, Nine, Ten are on this side and that's as our city was expanding into wards.

Did I answer your question?

Q. You did, sir.

Mr. Shurliff: Unless you have further need to appear at the map, I don't think . . .

Witness: No, sir, I don't.

Mr. Shurtliff. I think you can return.

(Witness resumed the stand.)

By Mr. Shurtliff:

Q. After you proposed a plan, introduced it, you said you did obtain voter registration statistics at that time? A. Yes, sir.

Q. For what purpose? [312] A. Because we are required by law to hold public hearings, and I know that this matter would be brought up at the public hearings, and I wanted to have this information available.

Q. Was that matter brought up? A. Oh, yes, sir.

Q. Who brought it up? A. Oh, any number of people.

Q. All right . . . A. But one thing I would like to point out, if I may, to the Court,—and if I may apologize to the Court, I am not an attorney, and in my enthusiasm befor I apologize to the Court.

Judge Robinson: I did not consider it intentionally done and I knew it was inadvertently done, and it wasn't necessary for you to identify yourself.

Witness: Excuse me, sir.

Judge Robinson: I just want you to know that I observed it . . .

Witness: Yes, sir.

Judge Robinson: . . . and it was—although inadvertent, was improper, and I thought it was only necessary to call attention to it and I'm glad to know I am right.

Witness: And may the Court accept my apologies.

Judge Robinson: It isn't necessary to do that.

[313] Witness: I thank you.

Judge Robinson: I thought you were a little carried away, too.

Witness: Yes, sir.

(Continuing) I would like to point this out, sir, one problem we have in New Orleans—and of course I am

dealing with the 1970 census because this is what guided our redistricting plans—we have 45% black population and 55% white population.

However, as of the date of the consideration of these redistricting plans, we had 34% black voting population and 64% white voting population. This presents a mathematical—a geographical problem of getting 45% population into a 33-voter population.

I think I heard Mr. Pezant say that the statistics will show, which I verified, that a great number of our black population are younger people and this is why we have to have a variance, unfortunately, in our redistricting plan of population versus voter strength.

By Mr. Shurtliff:

Q. Councilman Moreau, you testified that you really didn't believe the first plan passed by the City Council had a great chance of being approved by the Attorney General, is that correct? A. That's right, sir, but may I explain it please?

[314] Q. Yes. A. We are required by the City Charter of New Orleans to redistrict six months after the final statistics have been furnished to the city by the Bureau of Census. That was the reason why I got a registered letter off when I was president of th Council to Mr. Tannan (phonetic spelling) who I think was representing the Bureau at the time.

I kept away from any discussion of the redistricting program because frankly it involved primarily the five district councilmen. Then when the decision was given that, I think September was the time, of '72, was the date that we received the so-called third count take and then we had six months from that date to redistrict ourselves. And I felt that if these five district council—if these people could not get together, these five district councilmen could not get together and get a plan going, I would pick out a plan and introduce it to get it into court, or to get it into the record, then let's get on with the business of redistricting a real plan than the one we have.

Q. Then it is your testimony that the first plan approved by the City Council was not a serious attempt to redistrict? A. Oh, no, sir, it was a very serious attempt to redistrict the city, but remember, it was amended to divide Algiers into three districts. Algiers only had two districts [315] than. And the theory why I went along with the two districts, the plan for Algiers was, Algiers continually complained about the fact that they didn't have adequate representation on the City Council and we considered if we could get two District Councilmen over there representing Algiers, along with the two councilmen at-large, Algiers would have four persons for their councilmen and would get due consideration for their problems.

When it came up before the City Council, it was amended to put three districts in Algiers. At that time I knew there was no chance for this plan to go through because the people of Algiers objected to it also.

Q. Do you believe that it's important that the people of Algiers have persons on the City Council speaking to their issues? A. Well, positively.

Q. Why is that? A. You mean, have them on the Council speaking on the issue?

Q. Yes. A. Well, they are part of the City of New Orleans and they should be represented.

Q. And it was your judgment that if you divided Algiers into two districts, you'd have more persons who are speaking for the positions advocated by residents of Algiers? [316] A. At that time, yes.

Q. Do you believe it is important for the black residents of New Orleans to have persons on the City Council representing their interests? A. Well——

Q. Speaking to the positions that they advocate? A. I am glad you asked that question, Mr. Santcliff.

Q. Shurtliff.

Q. I feel this way that any black man can serve in any public office, elected by the people, can represent me and I feel that I can represent any man regardless of race, creed or color. Thank God I have reached the stage in life that I

no longer look upon a man as black and white; I look upon all people as human beings.

Therefore, I feel that I can represent anyone regardless of race, creed or color and anyone can represent m as long as he is an elected official.

Q. Can you represent the people in Algiers? A. Positively.

Q. Without living there? A. Positively because I have spent a lot of time over there.

Q. Can other councilmen? A. I can't answer for the other councilmen, sir.

And may I add, too, sir, I was raised in the vicinity [317] of St. Bernard's Housing Project there and I am still a resident of that area, which is an entirely black area.

Q. How many times have you run for the City Council? A. Twice.

Q. Have you run for other public office? A. Yes, sir, I ran for the State Legislature from Ward Seven which at that time had forty percent black residents and I was elected then.

And then the second time I ran for the City Council was Wards Seven and Eight and I was elected in the first primary.

And, incidentally, the third time I ran, there were nine of us in the race; we had two at-large and I won that in the first primary with a twenty-five percent, plus one vote.

Q. Do you believe the voting in New Orleans is along racial lines?

Judge Robinson: I didn't get the question.

Mr. Shurliff: (repeating) Do you believe that voting in New Orleans is along racial lines?

Witness: To an extent, yes I do, unfortunately. And I will say this, sir, unfortunately, mainly in a black area from the statistics, but we have many whites who will vote for blacks; I was one of the first ones to endorse Judge Augustine, who is black, and we have many blacks who [318] have elected whites where you have a large number of black voters.

I don't think that we can say that New Orleans is a complete block-voting city, as perhaps in other cities, sir.

Incidentally, Dr. Spears was elected to the school board citywide; he is also black.

Court Reporter: Would you spell that name, please?

Witness: (spelling out) That's S-p-e-a-rs.

Judge Robinson: I take it, Mr. Shurtliff, you will not be inconvenienced if we take a break at this point?

Mr. Shurtliff: I will not, Your Honor.

Judge Robinson: Very well, at this time, Marshal, the Court will stand in recess for ten minutes.

(Whereupon the Court recessed at 3:12 p.m.)

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MID-AFTERNOON SESSION

(The Three-Judge Court reconvened at 3.28 p.m.)

Judge Robinson: You may resume, Mr. Shurtliff.

(Witness resumed the stand.)

By Mr. Shurtliff:

Q. Councilman Moreau, the first plan submitted, you have testified you did not consider it had a good chance of approval by the Attorney General? [319] A. After the amendments, sir.

Q. What was the reason you felt the Attorney General would disapprove that legislation? A. Because of the fact of the geographic lines were not followed—and you can look at the map up there and see it—one of the understandings is that the lines must be as continguous as possible and that one of the reasons why I thought that plan would not be approved.

Q. Is it your understanding that the Attorney General's approval or disapproval goes to the question of race? A. Again, I would like to point out, Mr. Shurtliff, that race—I couldn't give you the statistics on race on that plan.

May I put in another thing, too. Again I would like to point out that in my statement, I don't recall if I said this, but there were two provisos; one was the Attorney General and the next—and this is in writing—being able to withstand any court attack; as I mentioned I think, to you, sir,

Mr. Schracow, a resident of Algiers, had the 1961 redistricting plan adopted by the City Council thrown out because of the disparity in Algiers. Therefore, it was my opinion that a citizen attacked this case, this is a redistricting plan also, and have it thrown out.

Q. On what basis did you consider a citizen could attack this first plan? [320] A. On the same basis that it was attacked in 1961, that the possibility of Algiers getting a councilman of their own in the near future would be diluted.

What I mean is that you have sitxy thousand-odd voters in Algiers and Algiers is an expanding area. If Algiers could expand to the point where they would have gotten from a hundred thousand to a hundred eighteen thousand people in one of the elections, then they could elect their own councilman by having their own district; whereas in this way, they were divided into three districts, sir.

Q. You stated that you also directed that the plan not dilute the black or white vote, is that correct? A. That there would be no voter dilution.

Q. Would you define for us what you meant by that term "dilution"? A. In other words, that there would be no lines drawn that would in any way gerrymander white or black voter strength, or a dilution of a black or white voter strength.

Q. What do you mean by "gerrymander"? A. Well, sir, as was pointed out by Mr. Pezant, if you can take the Desire Housing Project out of New Orleans East where you have over ten thousand black voters concentrated into one area; you can take the same North Project where you have a considerable number of black voter-residents, I don't know how many are votes; therefore you could by placing [321] these into one area or another, either dilute the black strength—voter strength, or dilute the white voter strength.

Q. Depending on where you took it from and where you put it? A. Yes.

Q. Wouldn't that problem necessarily follow from having to restructure district lines? A. No, sir, not necessarily

because as you look at the—let's look at the plan we now have in effect.

When in Plan B you have a concentration of black voters, which is known as Central City, then where you have approximately the Letter D, you have a concentration of black voters, what is known as St. Bernard's Project, and I think on—if you just look over here (indicating), I believe, on that map, Mr. Shurtliff, go to the big map there where you have the orange section, that may be the Desire Project.

Judge Robinson: Did you wish that map clear?

Witness: Sir?

Judge Robinson: Did you wish that map cleared?

Witness: No, I don't believe it has to be cleared. You see, what I am getting at is you have three major concentrations of black voter population in New Orleans. I would say the voter population is divided—excuse me, when I use the words "voter population", please forgive me, I mean your black population, is practically ninety-eight percent of [322] Desire, practically ninety-five percent in St. Bernard's, in District B, I imagine it would be around seventy percent in population.

Mr. Shurtliff: Would you go to the map, sir?

Witness: Yes.

(Witness withdrew from the stand and approached the board.)

By Mr. Shurtliff:

Q. Now you say there are generally speaking three large black area? A. I am talking about large black areas, yes, sir. Here (indicating) this is Central City, this is The St. Bernard Housing Project, and somewhere over here (indicating) you have the Desire Project on Louisa Street.

Of course you do have such in other areas, which I think the term is used "salt and papper" areas, where you have concentrations.

For example, in the area in which I was born—I live out in this area right now (indicating)—the area where I was born is practically a hundred percent black. My mother, my

uncle, and two cousins still live in that area and I own a home in that area.

Q. Maybe you can indicate on this map better (displaying another map)? A. (Examining the map) Yes, this is better, this [323] shows it. This is Central City right here (indicating), this would be St. Bernard right here (indicating), and I imagine this would be the Desire Area right here (indicating), and this is where you have your heavy concentration.

Q. Where are the salt and pepper areas? A. Well, the salt and pepper areas for example would be around this area here (indicating), the area here (indicating), and this area here (indicating) where you don't have the majority of black voter—black population.

Over in Algiers——

Judge Robinson: They are voter registrations on that map, are they not?

Mr. Shurtliff: Are they voter registrations?

Witness: Yes, sir (repeating), yes, sir, they are right down here (indicating).

Judge Robinson: Is this voter registration here (indicating by pointing), then population is on the other side.

Witness: This is voter here (indicating)?

Judge Robinson: That is voter.

Witness: And this is population (indicating)?

Judge Robinson: That is population.

Witness: Well, that would be a better example on the population. I am more familiar with population than I am with the voter registration.

[324] Yes, sir, you have a question?

Mr. Shurtliff: Yes.

By Mr. Shurtliff:

Q. These three general areas are the areas you state have the heavy concentration of black population? A. That's right.

Q. Now given those concentrations what could dilute those concentrations? A. You cut this in half (indicating),

you cut this in half (indicating), and you cut this in half (indicating).

Q. Who would it dilute, the persons taken or the persons remaining? A. I don't know. It could dilute both; it could dilute the white or dilute the black. I would like to point out again to you, sir, in my consideration of this plan, I did not go into voter population extensively at all. I only did it to have information, for that purpose, because I stuck to the redistricting lines on a population basis.

It is my understanding that nowhere are we instructed to redistrict by race, creed or color, according to the City Charter.

Q. What are your instructions with reference to that? A. By population and geographical lines that are contiguous. I'm speaking of the City Charter.

Q. Does this line (indicating) separating Districts B [325] and C, does that go through what you consider a heavy black concentration? A. I wouldn't know; by looking at it on the map, I imagine it would be.

Q. That's Canal Street? A. No, sir, Canal Street is not a heavy populated area. Where you would have a population around here (indicating), this area here, from my personal observation, you would have quite a number of blacks.

Q. What race on this side (indicating)? A. On this side (indicating) would be mostly business areas, on the eastern side of Canal Street.

Q. Yes. A. Yes, sir, it would be mostly business areas; on the western side, it would be most business areas until you get past Howard Avenue.

Q. Can you find Canal on here? A. This is Canal here (indicating).

Q. This is Canal Street (indicating)?

Judge Waddy: Which is Canal Street?

Witness: Yes, this is Canal Street (indicating). This is the business district right here (indicating), then you have a housing project right here (indicating). In fact, you have two housing projects; you have the Laffite housing project [326] right here, I don't know what you call this one right

off Canal Street (indicating), but you have two housing projects right there.

Mr. Shurtliff: I don't have any further questions on the maps.

Witness: All right.

Judge Waddy: While you are there, though, has any portion of the area northeast of Canal Street been placed in District D?

Witness: Northeast of Canal Street in District D? No, sir, I don't believe so.

See, Canal Street runs this way (indicating), then Canal —oh, pardon me, sir. Canal Street runs this way (indicating), and Canal Boulevard out this way (indicating).

Judge Waddy: No, I'm talking about, I believe, that portion to your right (indicating by pointing). Has any portion of it been put in C, I didn't mean D.

Witness: Oh, yes, sir, put in C here (indicating), but, sir, this is predominantly in my opinion a white population out here (indicating).

Judge Waddy: Come down further, come on down to your next C.

Witness: All right (moving along the map to a certain position and indicating), in here?

Judge Waddy: That's right. Now I understand that [327] is Canal Street just below that.

Witness: Yes, sir.

Judge Waddy: Now, my question is whether any portion of the area that is north and east, immediately north and east, that have been placed over in Section D?

Witness: No, sir, this is still Esplanade Avenue I believe, and that's been retained in E.

Now you should have a black population in this area right here (indicating).

(Addressing counsel) Can you check that map? It is on Esplanade and Legion Field, like it comes to a point there. It's——

Judge Robinson: Come up three lines, Mr. Shurtliff, and I guess you will have it.

Witness: Well, anyway, let's put it this way, I do know you have a concentration of—well, there are older homes in here (indicating) and you have a mixture of people who are, in fact, who may be very affluent people buying the older homes and reclaiming them and living right next door to what we call "shotgun doubles", in that area, which are low-rental homes, and a lot of these people own their homes in that area.

Judge Waddy: What I am trying to get, there appears to be a concentration of blacks to the northeast of Canal Street thre, just above your hand, Mr. Shurtliff, in there.

[328] (Mr. Shurtliff indicating on the map.)

Judge Waddy: Now my question is whether or not the redistricting has any way gone through the center of that concentration?

Witness: No, sir, that's been left alone.

Mr. Shurtliff: Does this line (indicating on the map) go through here (indicating)?

Witness: I don't know where you are. This is Esplanade (indicating). The old District D, sir—I hope you can catch me over there on the map—old District D used to go all the way out Esplanade and City Park, sir, now they have brought it over this way (indicating), and this would be northeast of this area right here (indicating). This is the French border right here (indicating) and northeast of it would be right here (indicating on the map).

I'm sorry, Your Honor, I don't follow your question too carefully.

Judge Robinson: I think maybe some help may be on the way. It looks like an overlay.

May I make suggestion, do you have an overlay, either for the map that is an overlay that would mark off these five electoral districts, either for the large map showing the population distribution by racial concentration, or for the smaller map showing the voter registration distribution on a racial basis? Do you have an overlay for either one of those [329] two because after all, the voter registration fairly well follows.

Mr. Shurtliff: Your Honor, what we have is (displaying a map to the Court) . . .

Judge Robinson: Bring it up a little closer because I am not able to see the different colors.

(Mr. Shurtliff moved forward and displayed the map to the Court.)

Judge Robinson: (Addressing Deputy Marshal) Could you help them rig something up right here?

Deputy U. S. Marshall: Yes, sir (approaching the board, assisting counsel with the map).

Mr. Shurtliff: Now, if I may, Your Honor, the bottom map is Defendants' Exhibit 1, which is a map illustrating fifty black dots, registered voters by race. The tissue, (indicating) illustrates the ward lines and residences of incumbent city councilmen, that is intervenors' exhibit number 1.

Judge Waddy: Are these present ward lines?

Mr. Shurtliff: Yes, sir, they are.

This overlay (indicating) is of the second plan, the one under consideration.

Judge Robinson: We understand that.

Now, Mr. Shurtliff, I don't know about my colleagues, but I am getting a little glare that is affecting the visibility owing to the gloss and the overhead light. Is there some [330] way we get that pressed down flat (indicating)?

(Counsel adjusting the maps and the overlay accordingly.)

Deputy Clerk. (Addressing Mr. Shurtliff) The overlay is Defendants' Number 5?

Mr. Shurtliff: Yes.

Judge Robinson: That's very much better.

First, I would simply like to inquire of Mr. Shurtliff, I take it that what is on the underlying map containing the green and red dots would conform to the Plaintiffs' I don't recall what the number is—that undertakes Plaintiffs' Exhibit Number 2, is it, Mr. Stoner—that undertakes to show the distribution on a racial basis of registered voters in New Orleans, is that correct?

Mr. Shurtliff: That is not correct, Your Honor, in that Plaintiffs' Exhibit Number 2 reflects more recent registration data. This is as of 11-17-71. There would not be in our judgment much difference.

Judge Robinson: All right. Is there any objection for purposes of the testimony of Mr. Moreau to use this exhibit?

Mr. Stoner: No, Your Honor.

Mr. Treese: No, Your Honor.

Judge Robinson: The second thing of course is—and I say this specifically for the understanding of the witness—this is a distribution of registered voters and [331] not a distribution of population?

Witness: Yes, Your Honor.

Judge Robinson: Does that make any difference to anyone for purposes of the questions to be put to this witness?

Mr. Shurtliff: Makes no difference to us, our Honor.

Judge Robinson: Very well.

Gentlemen, since we do have a problem in following the testimony of the witness and the use of this map, the Court will permit counsel or the parties to gather around and if everybody is in a position that everything that is about to transpire can be seen, you may resume your questioning.

Judge Waddy: Well, I think my question has been answered by the very placing of the map and the overlay on the board.

By Mr. Shurtliff:

Q. In your judgment, Councilman Moreau, would the drawing of this line (indicating) be a dilution or effect a dilution? A. I wouldn't know, Mr. Shurtliff, because as I have told you before, sir, when these plans were submitted to me, all I asked for was voter population: I did not go into the voter registration; and to dilute one or the other, if it was a dilution of one or the other, it was done on—if it was done on an intentional purpose, I would have objected to it [332] either way, diluting the white vote or diluting the black vote.

Bear in mind, sir, from this end of it, I am a candidate at-large. Politically, I could have been astute and stayed

away from this proposition because I run at-large, but I think it was my responsibility as the president of the City Council and an elected official of the City of New Orleans to get about the business of what we had to do with redistricting.

Q. Would you know, Councilman Moreau, what the impact on District C would have been; for example, had this line been drawn straight up here (indicating) and go this way and gone this way? A. No, sir, I don't know.

Q. Do you know what the impact would have been on District B had it been drawn here (indicating) or here? A. Except to see——

Mr. Stoner: I object to the question here because Councilmanic Districts as drawn are as nearly as possible equal in population. Now I think it can be drawn as showing clearly, remembering that each dot refers to, I believe, a hundred and fifty voters; that clearly, those lines that Mr. Shurtliff has suggested would clearly change the population balance between the districts.

Judge Robinson: Well, the question which was put to Mr. Moreau was did he know what the effect would be. I see no objection to that question.

[333] Witness: I will answer the question by saying it this way. First of all, as to the population, I have no way of knowing unless I have the number of people who were living there.

Now it is obvious if you drew a line here (indicating), that in creased the number of red dots, it increased the strength of your black voter population.

If you drew a line that encompassed more green dots, you would increase the white voting strength, and of course, it would have the opposite effect of diluting the other.

By Mr. Shurtliff:

Q. But in this plan—— A. Yes, sir.

Q. —does the drawing of this line (indicating) in your judgment effect a dilution? A. No, sir.

Q. Well—— A. You mean the way it is drawn right now?

Q. Yes. A. No, sir. All it did was divide the city by population, and that is what I'm interested in, that's my primary concern and interest and responsibility.

Q. Is to divide the city by population? A. Yes, sir. When we are speaking about population versus voters. In other words, if I have to make a decision [334] to divide the city by population or by voters, I would carry out the mandates of the City Charter which says we will redistrict the city by five equal districts by population.

Q. Well, in your judgment, is this line drawn in this way effect a dilution? A. I couldn't answer that, Mr. Shurtliff, sir, without checking the figures on this. If you eliminated this (indicating), it looks like it would be equal, but you would turn around and put more population into District E which would throw you imbalance in District D from your population viewpoint.

Therefore, you would be subject to a suit by someone who would come in like they did the last time in 1961.

Mr. Shurtliff: As long as we have this up, we would like to put up the NAACP Plan for comparison at this time.

Defendants' Exhibit 6.

(Counsel are placing NAACP map in position for display.)

By Mr. Shurtliff:

Q. This is the NAACP Plan (indicating). Was this plan proposed to you by Mr. Eckert from one of the four submitted to you by Mr. Eckert? A. Let's put it this way, the plan was first submitted to me by—not to me, to the City Council by Mr. Chapital, and then I asked Mr. Eckert to superimpose that plan on a map with [335] population statistics, not voter registration statistics, population.

Q. And this was one of the four plans submitted to for for your consideration? A. Right, sir.

Q. And you stated that you did not care for this plan because of what reason? Would you illustrate the reason? A. I don't believe I stated that I didn't care for this plan,

sir. I said I had objections to this plan based on this fact here.

First of all, this line (indicating) came over and took—eliminated—incidentally, this is St. Bernard Parish—this eliminated District E entirely, any riverfront representation at all.

Th next thing is, it placed Algiers in District D, and I believe, in my opinion, that Algiers is more compatible for many with District C.

Q. Do you know the differences—did you determine the differences between the NAACP Plan and the plan you ultimately selected in terms of racial composition of each of the five districts? A. Absolutely not.

Q. You did not have those figures? A. I probably have them in my briefcase, but by memory I could not give them to you.

[336] A and B, of course, you know, were the thing.

Q. C, D and E were not? A. C, D and E were different.

Q. All right.— A. It is my understanding that in the NAACP plan, the population statistics were within close enough range to be considered as a good plan by population, you know, on a redistricting—city on the basis of the (pausing in thought)——

Q. One-man, one-vote? A. Yes, sir, one-man, one-vote.

And of course, you have the other problem—I think I have mentioned this—again, you are deviating, you are coming out here (indicating) and going way over here (indicating) on a geographical line. That's a minor point, but——

Q. I don't understand. A. Well, sir, the instructions were, we were trying to keep as nearly as possible our lines in line. Here you have a line (indicating) that comes over here and all of a sudden shoots way over into this area right here (indicating).

Q. Why were you trying to avoid that result? A. Because were trying to keep—this is Franklin Avenue I belive, right there (indicating), and after Franklin Avenue—and Franklin Avenue is one of the main thoroughfares of the City of New Orleans, which is a natural boundary again, [337] and neighborhoods, and so forth, and so on, and has been that way for many years.

Q. Is Florida avenue a major boundary line? A. No, sir. Florida Avenue is not a major boundary line.

Q. St. Claude? A. St. Claude is not a major boundary line, no, sir.

Q. How about on this plan (indicating), doesn't this line go off in another direction? A. Yes, sir, but it does not come over to this direction way over here (indicating), sir.

This line comes over here to pick up this amount to get a balance in your population count. And I say——

Q. Is that a good reason for having a line go this way (indicating)? A. Yes, sir, unless you can show some other way that you could get this over here (indicating). They possibly considered going this way (indicating), which is the old boundary of District D; District D went this way (indicating); but the probably considered that they couldn't get the population count because it looks like they have a heavier population here, because over here (indicating) you have the fairgrounds, which is a lot of empty ground.

Q. Did you consider it important to follow ward lines? A. I considered the ward lines as a guideline, but [338] I did not consider that the following of a ward line was a must because historically we have had the ward lines and the city has been divided that way, in that manner and considering everything else being equal, yes, I would consider ward lines in preference to anything else other than natural boundaries.

If you have to deviate, but deviate to natural boundaries, but keep the ward lines as nearly as possible. We have no more political relationship with ward boundaries when we used to elect a representative from a ward to such and such.

Q. State representative? A. Yes, state representative.

Q. You no longer do that? A. To my knowledge, no. I think you go through different wards.

A ward boundary would not be a final determining factor in this.

Q. Were ward lines important in the drawing of this plans? A. You say were?

Q. Were ward lines an important factor—I will stay with that—an important factor . . . A. Yes, I will say this, because ward lines historically followed your historical lines and your natural lines. Therefore, if you had a ward line, for example, that runs parallel with Bayou St. John, if you had another one that ran along [339] Franklin Avenue, this was a natural boundary and the ward was created that way for historical reasons for years back.

Therefore, it's not necessary this way because of the ward lines because it deviated from the ward line here (indicating), by the way, this is the seventh ward, and they brought this ward over here (indicating), so they didn't redistrict themselves solely to ward lines; they deviated from ward lines.

Q. Well, were ward lines only important then so far as they also conformed to natural boundary lines? A. Sir, again I would like to point out to you that when this plan was handed to me, the only guidelines that I gave was that I wanted an equitable plan to carry out the guidelines that I gave to your before, and which I will repeat, if you want to now. Ward lines were not mentioned.

Q. Not mentioned by whom? A. By me in giving instructions to them as guidelines—to the council research staff.

Q. Why did you not mention ward lines to them? A. Because in the City Charter, it says that you will follow as nearly as possible geographical contiguous lines.

Q. It says that in the City Charter? A. It says that in the City Charter or somewhere; I think I can check it to find out, if you want me to check it.

[340] Q. Councilman Moreau, to your knowledge does Intervenors' Exhibit Number 1 accurately reflect the ward lines in the City of New Orleans——and I appreciate the difficulty of your having to read, too. A. Yes, I would say they do.

Mr. Treese: We will stipulate to that.

Judge Robinson: It is so stipulated, gentlemen.

Witness: Of course . . .

Judge Waddy: Wait, just a moment.

Judge Robinson: Mr. Moreau has some more to add.

Witness: I think we have stipulated already that New Orleans East is not on this map (indicating).

Judge Robinson: Yes.

Judge Waddy: Yes.

Judge Robinson: Very well.

By Mr. Shurtliff:

Q. Councilman Moreau, just in comparing the plan to the ward lines, now without trying to see Defendant's Exhibit Number 1 underneath, is it true that this line (indicating) does not follow a ward line? A. I don't believe it does, no sir.

Q. This line (indicating) does not follow a ward line? A. No, sir, it does not.

Q. This line (indicating) does not follow a ward line? A. Let me look at it (examining the map) and see. [341] No, sir, it does not.

Q. In your opinion, sir, is the fact that these lines do not follow the ward lines, is that important to the plan? A. It's important that they don't—I mean, it's not important that they do follow natural lines.

When you get into this line right here (indicating) you come across here and cut down—I think this might be St. Bernard which is a major thoroughfare—and come back down this way (indicating), and you've got the natural boundaries. Your parish line here (indicating), your river here (indicating), your river here (indicating), your Jefferson Parish line over here (indicating).

Q. What is the name of the boundary here (indicating)? A. It may be Fleur de Lis or Canal Boulevard; I just don't know which one it is. I don't know which one it is, but it's one of the main thoroughfare streets we have there.

We have in New Orleans neutral ground streets. The qualification of a neutral gound street is a street that is one way on side, one way on the other side, and you have a neutral ground or green area that may vary from ten to fifty feet wide due to the fact that we have underground canals going under the neutral grounds.

Mr. Shurtliff: I have no further questions, Mr. Moreau, thank you very much, sir.

Judge Robinson: Very well. Just before you resume [342] your seat, Mr. Moreau—is there going to be some further cross-examination?

Mr. Cotton: Yes, Your Honor.

Judge Robinson: Well, would you resume your seat, then, sir?

(Witness resumed the stand)

Judge Robinson: Do you need the maps, Mr. Cotton?

Mr. Cotton: For my convenience, Your Honor, I might refer to them from time to time, but I won't be needing them for my examination.

Judge Robinson: Very well. You may proceed, Mr. Cotton.

By Mr. Cotton:

Q. Sir, my name is Charles Cotton (spelling out) C-o-t-t-e-n. A. Thank you, sir.

Q. I think you testified, Councilman, that you were elected to your at-large position in 1969? A. Yes, sir.

Q. Now—after your election did you make an analysis on a precinct basis as to where you votes came from? A. No, sir.

Q. Have you ever after being elected to any elective office made an analysis on a precinct basis? A. Only from what the newspapers published.

[343] Q. Did the newspapers publish an analysis after your councilman at-large election? A. Yes, sir, they did.

Q. What was the percentage of the black electorate in the City of New Orleans? A. I haven't the slightest idea,

Mr. Cotton, what percent of black or white votes I received.

Q. I think you testified earlier than when you ran for a district—you were previously a district councilman? A. Seventh and Eighth Wards, yes.

Q. Now which District would that be? A. That would Seventh and Eighth Ward, District D.

Q. District D. I think you testified that when you ran for that post that you received forty percent black votes? A. No, sir, I said approximately forty percent of the population of black and it may be high on reconsideration, because it's probably the population at this time, as I was told by Mr. Lambert, the population at that time may have been around thirty percent, I really don't recall.

Q. Okay, did you . . . A. I want to make it clear that I did not state that I got forty percent of the black votes.

Q. I am not trying to pin you down to a particular figure, Mr. Moreau. A. Yes.

[344] Q. After your election in 1969 to your present position, did the newspapers report what percentage of the black electorate supported you? A. No, not to my knowledge—they may have, but not to my knowledge.

Q. You have no knowledge of what percentage of white votes or black votes you may have received? A. Absolutely not.

Q. This would be applicable to any elective office that you may have run for since? A. Absolutely.

Q. Now . . . A. May I understand your question, that an analysis of any number of votes . . .

Q. What percentage, for instance. I think you stated, and correct me if I am in error, that when you were councilman of District D, you were in a campaign in which you received approximately forty-six percent of the black votes I received. I never analyzed that.

Q. Okay, it's my mistake.

Prior to 1969, what other elective office did you hold in the City of New Orleans? You stated you were councilman of District D? A. Yes, sir.

[345] Q. Other than that position? A. I was elected to the State Legislature in 1963 and took office in 1964 and

served for two years in the State Legislature when I ran for the City Council.

Just to clarify, to help you out, Mr. Cotton, the district I represented the State Legislature consisted of one ward, which is the Seventh Ward, which was a part of District D at that time, and still is.

Q. And at that time was District D on a population basis majority whites or majority blacks? A. I'm sorry, I didn't hear you.

Q. At that time when you held the position as district councilman of District D, was that district predominantly white or predominantly black? A. Predominantly white.

Q. Now do you know the percentage? A. No, sir, I don't.

Q. I think you further stated that since you have held elective offices, you have to the best of your ability tried to represent all of your constituents irrespective of race. A. Yes, I hope I have.

Q. And you also stated that based on your knowledge, if there had been any block voting, it has been been basically on the part of blacks, is that correct? [346] A. Yes, sir, as I say, that based on newspaper reports that came out, which I cannot verify because these are newspaper reports and columnist reports, in the Touro-Dupontier (phonetic spelling) election there was a black and white issue, unfortunately, brought into that, and it was pointed out quite obviously, that this was block voting by the blacks.

Q. Okay. And that election? A. Yes, that was 1960, by the way.

Q. And who prevailed in that election? A. Murphy Touro (phonetic spelling) won the election.

Q. Did he receive the . . . A. According to the reports, Mr. Dupontier received the black votes.

Q. What percentage of the white electorate voted for his opponent? A. Unfortunately, Mr. Cotton, I don't observe statistics too much, and I wouldn't know that.

Q. But you do maintain that only the blacks voted in the block at that time? A. No, sir, I just maintained that

only the blacks voted because the Eighth Ward, which is predominantly white, they voted in the predominantly white block vote.

Q. So there are some instances . . .

Q. Oh, there are many instances, I though I had testified to that before, that there are instances where you [347] have block voting in black and white.

Incidentally, we are now running into Latin American voting in New Orleans.

Q. Is it fair for me to say that New Orleans is a city in which block voting is a predominant characteristic? A. No, sir, I would say it is isolated, sir, rather than predominant.

Q. Isn't it true, sir,—I think you testified that you were one of the first to endorse Judge Israel Augustine? A. That's right, he is a personal friend of mine, a lifelong friend of mine.

Q. And isn't it also true he had the support of the mayor? A. I don't recall.

Q. Okay. A. Who do you mean, Mayor Landrieu?

Q. Yes. A. Yes, I think he did, yes.

Q. And would you say that the mayor's support was aggressive support? A. I wouldn't know.

Q. Did the mayor use media to—— A. I wouldn't know.

Q. Okay, what other black candidates have you supported? [348] Since you have held elective office. A. I supported Dr. Spears who ran for the school board.

Q. Okay. A. And I opposed Mr. Moriele, who is black, of course, when he ran against me.

Q. Okay. A. And of course, when he ran for judgeship I opposed him again.

Q. You opposed him again, that was recently. A. I think about six or eight months ago.

Q. Okay, Council Moreau . . . A. Incidentally, may I just add for the Court's information, we are not permitted to actively—or a school board member is not permitted to accept the active endorsement of any elected official of a political organization. So that support would be on the

basis of asking people to vote and contributing to the campaign, and so forth.

Q. Okay. Did you support Mr. Williard. A. Yes, sir, Elliott Willard, I supported him for the school board.

Q. And what was the result of that election? A. He lost.

Q. Who did he lost to? A. He lost to a white man.

[349] Q. And Mr. Willard is black? A. He is black and a very personal friend of mine.

Q. Did you support Mr. Nils Douglas in his campaign? A. No, I don't believe I supported Mr. Douglas.

Q. Could you identify the position that Mr. Douglas ran for? A. I really wouldn't know what he ran for. It may have been the House of Representatives, I don't know.

Q. Did you support Mr. Larry Kaitz?

Mr. Stoner: If Your Honor . . .

Judge Robinson: How much more of this, Mr. Cotton, do you have? I think I see your objective, but you have been through about a half dozen different examples.

Mr. Cotton: Yes, Your Honor. I'll move right along.

Judge Robinson: Well, I asked you a question. I don't mean to cut you off. How much more of this do you have?

Mr. Cotton: Only a couple more questions, Your Honor.

Judge Robinson: You have an objection, do you, Mr. Stoner?

Mr. Stoner: Yes, I was objecting to the line of testimony. I allowed this to go on . . .

Judge Robinson: I think it's relevant, but I think it's getting accumulative.

[350] Judge Waddy: Yes, cumulative.

Mr. Cotton: Okay.

Judge Robinson: Why not move on?

Mr. Cotton: Yes, I will move on, Your Honor.

By Mr. Cotton:

Q. You stated that you have supported all of your constituents in all of the elective offices in which you have held, is that correct? A. I've done what, sir?

Q. You have served irrespective of race or color all of your constituents? A. I hope I have, yes.

Q. Do you believe that based on your voting record in those elective offices, you have represented the interests and aspirations of blacks? A. I certainly have, sir.

Q. Okay. Do you recall any issues in which the interests of your white constituents was at odds with the interests of your black constituents? A. Yes, sir, and I will be glad to relate it to you.

Q. Would you relate some of those instances? A. In 1968, we passed the ordinance or motion creating the Human Relations Committee in New Orleans. The purpose of this committee was—after 1966 incidents were high and so forth, and the purpose of this committee was to serve as an [351] arbitrator and the people who served on the committee were elected by the people.

Shortly thereafter, the New Orleans Municipal Employees Council which for years had been recognized, not as a negotiating party, not a negotiating body because they were not a union body, but as a representative of the employees.

The New Orleans Municipal Employees Council refused to admit blacks. I met privately, without any publicity, with a man by the name of Toby Ballas (phonetic spelling) who started in the organization and asked him to reconsider his viewpoint. He told me that he would, and then they had a meeting and either the board of directors, or the group, I don't know what it was, but anyhow, the answer was that they would not admit blacks to their organization.

I then spoke to Monsignor Greenley who was, I think at that time, and may still be, an executive with the Employees Relations Council, the Human Relations Committee, who is a white priest, and I told him, "Father, if we can resolve this thing, fine and dandy; if not, I am going all out".

So Mr. Ballas appeared before the City Council and we questioned him on the admission of blacks and I brought

out the point, "did he admit everyone", and he admitted that he did not admit blacks. He accused me publicly of being a racist.

He further—excuse me, he is a Civil Service [352] employee—accused me of using that to gain political votes. He could accuse me of being a racist, that is his privilege, as a narrow-minded man; but when he stepped in as a Civil Service employee and accused me of using that to get votes, that's when I wanted to step in to the Civil Service Commission.

I was advised by a friend of mine that due to Mr. Ballas' physical condition not to do so. But I have a letter which I wrote to the mayor of the City of New Orleans, and a copy was sent to each councilman, telling them that I was directing the Clerk of the City Council not to permit in New Orleans this employee council to meet in the Council Chambers any more because they were a private organization and I respected their right to exclude whomever they pleased if they were a private organization.

Therefore, without objection, based on my part and my part alone, they were refused admission.

I then wrote to the mayor of the city, since payroll deductions were permitted for their dues, and requested the mayor to stop deducting their dues, otherwise I would put in a motion preventing it. That was done.

The next thing, in the City of New Orleans you had a law that for a master plumber to obtain a license, he had to have the approval of two other master plumbers. All the master plumbers in New Orleans were white.

Mr. Touro, a very dedicated man in civil rights and [353] a friend of my family for many years, came up to me—he actively supported me every time I ran—made the situation known to me and I went before the Sewer and Water Board and gave them one of two choices: It either get two plumbers to sign this application for Mr. Delahousi (phonetic spelling), or I would take this matter up before the City Council, and I didn't mention Mr. Touro's name, that he would take legal action.

Mr. Delahousie was eventually given a master plumber's license.

Q. And I think you should be congratulated for that, Councilman Moreau. A. No, sir, I don't think I should be congratulated for doing something that I think is my job to do, sir, but I appreciate it.

Q. Were there any other issues that came before the City Council? A. Yes, sir, the Public Accommodations Ordinance—may I refresh the Court—we had a law in New Orleans which dated back for many years that a black man and a white man could not go into a public bar and drink together, and this particular issue was naturally a hot issue because you have so many so-called barrooms in the City of New Orleans, and they claimed that anyone who voted for that would be hurt politically.

[354] My name was on the Public Accommodation Ordinance to eliminate that requirement and to permit men of all race, creed or color, to drink at any barroom.

Q. Isn't it a fact, Councilman Moreau, that the National Football Players League had voted to boycott the Super Bowl to get that Public Accommodation Ordinance to not be passed? A. Yes, sir, that was only after we had gotten involved in this thing; in fact, I even took the mayor the pass—because I am a politician—and they had one barroom right opposite the Roosevelt Hotel that had caused us more trouble than anything else because they wouldn't admit blacks and I told the mayor, I said, "Mr. Mayor, why don't you have the Board of Health check it, why don't you have the fire department check it; if you are going to play politics, let's play it". That was before the football issue.

Q. Isn't it a fact, Councilman Moreau, that that ordinance was only passed after the National Football Players League voted that unless a Public Accommodation Ordinance was passed by the City of New Orleans, that the City of New Orleans would not get the Super Bowl? A. It had no bearing on me voting, myself, because it was advocated long before that.

Q. But it was voted on after, or subsequent to that edict by the National Football Players League? [355] A. As a statement of fact, it was, yes.

Q. Do you recall the Confederate flag issue? A. Yes, sir.

Q. Do you recall your position on the Confederate flag issue? A. Yes, sir, I do.

Q. And what was your position, sir? A. My position was that the Confederate flag should remain in the City Council's chambers.

Q. Did you believe that the Confederate flag offended any of your constituents? A. I don't know (pausing in thought)—yes, I assume the Confederate flag would offend some of my constituents.

Q. Wasn't there general opposition by the black community that that flag be removed, sir? A. From the vocal group, it was, yes.

Q. Wasn't it very vocal? A. Yes, it was very vocal, but I would say a minority.

Q. What do you consider a minority? A. Well, that's just it. We have the same people that come in and were complaining to City Hall about the same things over and over again.

Frankly, the Confederate flag to me no more means discrimination or segregation than that flag up there (indicating by pointing to the American flag in the courtroom), which [356] I respect to the highest.

Q. Would you consider putting a Black Liberation flag in the City Council?

Judge Robinson: Put what?

Mr. Cotton: The Black Liberation flag in City Council.

The Witness: I would rather not answer that question.

Judge Robinson: I didn't get your answer.

The Witness: I would rather not answer that question, sir.

Mr. Cotton: Your Honor, I would ask that he be instructed . . .

Judge Robinson: Do you want this question answered?

Mr. Cotton: Yes, Your Honor, I would ask that he be instructed.

Judge Robinson: I will have to instruct you, Mr. Moreau, to answer the question.

Witness: Yes, I would oppose it if it—wait, would you define what the Black Liberation flag stands for, sir?

By Mr. Cotton:

Q. Well, what do you think it stands for? A. I don't know, sir.

Q. Have you ever seen any . . .

[357] Mr. Tresse: Your Honor, I am going to object . . .

Judge Robinson: I am going to ask counsel to come up to the bench.

Bench Conference

Judge Robinson: Now, Mr. Cotton, what's the purpose of this?

Mr. Cotton: There are two things. First of all, we contend that the two at-large seats are virtually guaranteed based on the present plan that white candidates will always hold that position; secondly, Mr. Moreau has put his qualifications as a representative of all people at issue when he stated over and over again that he is representative of all the people.

We intend to show that this City Council as presently constituted has not only been insensitive, but quite often hostile to the interests of blacks.

Judge Robinson: Well . . .

Judge Waddy: Is this the place to try that issue?

Judge Robinson: Let me ask this. Do you make that claim against Mr. Moreau personally?

Mr. Cotton: Personally and against . . .

Judge Robinson: My question is do you make that claim —I understand you to make that claim generally against the members of the Council. Does that include Mr. Moreau, personally?

[358] Mr. Cotton: Personally.

Judge Robinson: What is your position, if you had an objection?

Mr. Stoner: First of all, the issue of the two at-large seats is not before this Court. This Court is being asked to approve a plan of redistricting the five councilmanic districts of the City of New Orleans. The City Charter calls for two at-large members. There have been two votes taken as the record well reflects, for proposals to increase the size of the City Council, and the only issue before the Court is the redistricting of the five councilmanic districts.

Mr. Cotton: May I add this one point, we also contend a showing of racial hostility on the part of Mr. Moreau was an ingredient in his drafting of the two plans, the present plan before the Court and a motivation.

Judge Robinson: Any other counsel wish to be heard on this before we make a ruling?

Mr. Shurtliff: The issue of the attitudes of blacks in the wards of the City Council is very pertinent to the case and we plan to put on evidence later.

Judge Robinson: That's not Mr. Cotton's tender, as I understand his explorations into the subject. In other words, it is Mr. Moreau's attitude, am I correct, is that what you are trying to probe?

Mr. Cotton: The public's attitude.

[359] Judge Robinson: May I ask this question, is it expected when this trial resumes that this will be a matter that we will get to before the day is out, that Mr. Moreau will be back, will be present here?

Mr. Stoner: We had made no decision on that.

Judge Robinson: Because one of the problems that we have is, I think, with the—Mr. Cotton, (addressing counsel) on one of your objectives, you are anticipating something that will be a part of your defense, and it seems clearly outside of the scope of any testimony that Moreau has given in this case so far.

On the other hand, it seems to me, and my colleagues will correct me if I do not represent their views, that you

are entitled to a reasonable range on your other ground. Mr. Moreau has made certain professions from the witness stand, and of course you would be entitled to make reasonable inquiry in that regard.

Judge Waddy: And he's also the sponsor of the plan—I mean, his personal attitude, I think, is relevant.

Judge Robinson: How much more, how much more do you have, Mr. Cotton, in the way of this.

Mr. Cotton: I will exhaust this point and move on to another point. I had intended to proceed to another point for the convenience of time and expediency. I will proceed now and leave it like that.

[360] Judge Robinson: The Court will indulge you within that limitation and it is understood that if at a later time you want to explore the other objective with Mr. Moreau, you will have to do that with the—following the presentation of the case by the plaintiffs and intervenors.

Mr. Treese: May I have a point of clarification from the bench? As I understand the Court's ruling, Mr. Cotton is permitted to follow along this line of inquiry dealing with pure speculation. If the issue were presented to the City Council of New Orleans in regard to a Black Liberation flag how would he vote?

Is Mr. Cotton permitted to continue hypothetical questions such as that, or is he restricted to actually constructed issues before the City Council?

Judge Robinson: If the form of questioning would have a tendency to develop by way of the witness' responses, attitudes might be relevant issues in the case.

Mr. Treese: I will respectfully represent to the Court that it would require deliberation, meditation and response from the constituents to ask this councilman to in effect cast a vote for the first time having heard the issue before the first time without having that response from his constituents, I don't think is reflective how he actually might vote under ordinary circumstances.

He has testified he voted for the Confederate flag

[361] Mr. Stoner: That's an issue.

Judge Waddy: We have passed that issue.

Judge Robinson: The question was put to Mr. Moreau and I believe more than once, and answered on direct examination with reference to his responsiveness to his constituents.

Mr. Treese: Yes.

Judge Robinson: Obviously, there are various ways to test on cross-examination a witness who has professed that on direct examination.

The Court's ruling will give Mr. Cotton reasonable range to do that. The Court's ruling will not permit him to develop testimony leading to his other objective, which in the Court's view is more directly related to the presentation of the intervenors' case and the matter at this time is outside the scope of anything I can recall.

Mr. Cotton: Mr. Moreau testified to it, and that clarified the ratification.

(End of bench conference.)

Judge Robinson: I don't know whether a question was pending or not, but whether it was or not I think you had better restate the question that you want the witness to answer.

Judge Corcoran: I would like to go on record as saying I would strike the question and answer.

Judge Robinson: You may put your question, Mr. [362] Cotton, to the witness.

By Mr. Cotton:

Q. I believe, Mr. Moreau, I asked you if any of your constituents desired to have the Black Liberation flag placed in the corridors of these Council Chambers? A. Not to my knowledge.

Q. Would you vote in favor of that?

Judge Waddy: He's answered that question.

Mr. Cotton: I was asked what was the last question.

Judge Robinson: No, I said I didn't know whether there was a question pending.

Judge Waddy: Go to your next question.

By Mr. Cotton:

Q. Now, Mr. Moreau, you stated that you had some reservations about the plan offered by the NAACP, is that correct? A. Yes, I think I stated those facts.

Q. And it had to do with the demarcations around the port area? A. Yes, sir, in the area below the E, between the St. Bernard Parish line and District D which eliminated the riverfront.

Q. Isn't it a fact, Mr. Moreau, that you publicly stated on the media that you would vigorously support the NAACP Plan? [363] A. No, sir. The news media stated, "Moreau supports NAACP Plan", and I have the newspaper clipping with me, and later on it goes on to clarify that point where I stated that the NAACP Plan had certain factors of it that were good and would be considered and A and B were those two good points.

Q. You never stated that you would promote the NAACP Plan? A. No, sir.

Q. You never publicly stated that? A. No, sir.

Q. Have you ever given any interviews to the news media? A. Oh, hundreds of interviews.

Q. Television, radio in connection with your support of the NAACP Plan? A. They may have asked me about the NAACP Plan and I said that we would consider the NAACP Plan because I thought it had some good features, but there were some things in the NAACP Plan that had to be worked out.

Q. And if we showed you an interview which you gave to a media in which you stated that you would support the NAACP Plan, would you say that at that point when you gave the interview that you weren't favoring the NAACP Plan?

Mr. Stoner: I object. I think this is a speculative question.

[364] Judge Robinson: Do you have such a document?

Mr. Cotton: I do, Your Honor.

Judge Robinson: You will be permitted to show it to the witness and then put your question to him.

Mr. Cotton: You also stated, Mr. Moreau, that . . .

Judge Robinson: Well, do you want to do that, Mr. Cotton?

Mr. Cotton: I think, Your Honor, I will use that opportunity to . . .

Judge Waddy: Well, then, are you withdrawing the question?

Mr. Cotton: Yes I will withdraw the question and I will use that opportunity when the intervenors puts on its case.

Judge Robinson: Very well.

By Mr. Cotton:

Q. Now Mr. Moreau, you stated that you reside roughly in this area (indicating on the map)? A. Yes, I imagine. I reside in the approximate area, yes.

Q. You also stated that there were blacks who resided in that area? A. One, Dr. Strange, lives about a hundred fifty yards down the street, and about five hundred yards, there are numerous blacks that live in that area on Marabeau.

[365] Q. Numerous blacks? A. Numerous blacks. Well, Park Chester is one of the concentration areas. If you get your maps out, well, you can see it right there. The Park Chester (indicating by pointing to one of the maps displayed) you can see it, the red dots right below that (indicating), right there where your thumb is—your left thumb.

Q. (Indicating by pointing to a spot on the map)? A. Yes, sir.

And, incidentally, that is not updated because there are more blacks that have moved in that area since then.

Q. Would you say it's your—the district in which you live, what percentage of blacks live in that area, what percentage of blacks? A. Would you define the area, sir?

Q. The area where you reside presently. A. How big is that area, Mr. Cotton?

Judge Robinson: Are you talking about the blocks, same ten blocks?

The Witness: Oh, no, sir; no, sir. There is one black family within about a block of me and there may be about fifty or sixty within about five blocks of me.

Mr. Cotton, don't let me confuse you. I did say my mother and my uncle and two cousins live in a completely black neighborhood.

[366] By Mr. Cotton:

Q. And which area is that? A. That's Lafrenier and Republic Streets.

Q. And how close to the St. Bernard Project area is Lafrenier? A. Lafrenier?

Q. Yes. A. Oh, I'd say it's only about four blocks from the St. Bernard Project area.

Well, now, wait a minute. Let's put it this way, the Lafreniere Street runs through the St. Bernard Project area, but where my mother lives and where I own a home, which I rent out, Republic and Lafreniere is about four or five blocks away.

Q. Now you stated that one of your primary considerations in approving the plan in question was not to place an incumbent against another, is that correct? A. No, sir, positively. Would you repeat the question, sir?

Q. I think you testified that one of your considerations in arriving at which plan you would endorse was not to put any of your fellow councilmen against each other? A. Absolutely not. I stated quite the contrary. I state that this was immaterial to me whether one of them ran against the other.

[367] Q. Didn't you state that although they are personal friends, you are cast sometimes in political opposition and for that reason you did not want to be an author of the plan that would have pitted one against the other? A. No, sir. After the plans were introduced and after the addresses were furnished to me—or the plan was furnished to me, I made the comment that "I am glad that two of

the councilmen were not running against one another, so they could not accuse me of 'Parson's Politics' ", that I was trying to eliminate one of the people from the City Council.

Q. Did you state your knowledge about the differences between the plan before the Bar and the NAACP Plan? Do you know the differences?

Judge Waddy: This is repetitive. He's testified to that twice, I believe.

Mr. Cotton: I'm using that as a foundation.

Judge Robinson: Well, let's get to your quetsion. We all understand.

By Mr. Cotton:

Q. If the NAACP Plan had been introduced and endorsed by you and had to be put to the Council, the presently constituted Council, in your estimation based on your discussions with your fellow Councilmen, would it have passed?

Mr. Stoner: I object, Your Honor. I think the question is . . .

[368] Judge Robinson: Yes, that calls for an opinion. What value does the statement have?

Mr. Cotton: Your Honor, I'm merely trying to show the fact that there were two incumbents who would have been pitted against each other in the NAACP Plan, that accordingly to the voting procedure of the City of New Orleans City Council, the plan could have passed by five-two vote.

Judge Robinson: I will sustain the objection.

Mr. Cotton: Your Honor, since the Court has taken the position that we shall proceed in the intervenors put on its case . . .

Judge Robinson: With the intervenors case, yes.

Mr. Cotton: Yes, Your Honor. . . . I would reserve the rest of my questions to Mr. Moreau at that point.

Mr. Halpin: May we point out to the Court, however, by note when we are talking about the intervenors' case,

by no means are we conceding the point that the burden is upon the plaintiffs, the City Council of the City of New Orleans to prove that the two-at-large districts are not racially discriminatory; it's not our burden to prove that they are.

Judge Robinson: The basis of the Court's ruling is you are limited on cross-examination to the scope of the direct examination.

Mr. Halpin: Thank you.

Mr. Cotton: Thank you.

[369] Judge Robinson: Now is there any redirect examination?

Mr. Stoner: No redirect examination.

Witness: May I be excused?

Judge Robinson: I was just about to put the question to counsel.

May Mr. Moreau be excused? Everybody is going to be excused for awhile very shortly, out of sheer necessity (smiling).

What I am trying to find out is this, does any side in this litigation expect to have Mr. Moreau back as a witness; I understand the intervenors may wish to do that at a later time.

Mr. Halpin: Particularly, Your Honor, if there is some space between today's hearing and the continuation of the hearing, we probably would.

Judge Robinson: I presume that we can arrange to let Mr. Moreau know in a reasonable space of time ahead in the event his presence as a witness in the case is further desired.

Mr. Halpin: Yes, Your Honor.

Judge Robinson: With that limitation and subject to the reservation (addressing witness), you may be recalled.

Witness: Not today?

Judge Robinson: No.

Witness: I want to get back.

[370] Judge Robinson: Thank you.

Witness: Thank you.

Judge Robinson: There was a question or so that Mr. Halpin wished to address to Mr. Pezant based on some documents that I presume have been located by now.

Would you resume the stand, please (addressing Mr. Pezant)?

(Whereupon Mr. Pezant resumed the witness stand.)

James N. Pezant

Cross-Examination (Cont'd)

By Mr. Halpin:

Q. Mr. Pezant, do you have with you now the documents which you referred to earlier as Mr. Salatich's summary of the guidelines for avoiding racial discrimination in the drafting of the plan? A. Yes, sir, I have a letter that is dated November 23, 1971. It was addressed to Councilman Moreau as President of the City Council. It is signed by Mr. Salatich and approved by Mr. Blake Arata, the City Attorney, and it is the opinion of Judge E. Gordon West in the reapportionment of the House of Representatives and the Senate of the State of Louisiana.

Q. Just for purposes of identification at this point, is there not also attached with those letters a page on which the present incumbent councilmen are named with their addresses and their ward and precinct locations? [371] A. Yes, sir, there is.

Q. And is that all of the materials which were appended to the letter? A. In this particular letter, yes, sir, and I don't know why it is appended.

Mr. Halpin: If we will, we can stipulate, I think, to the admission, can we not? It could be Intervenor's . . .

Mr. Stoner: We will put it in as our exhibit.

Judge Robinson: You want to put it in?

Mr. Stoner: Yes, Your Honor.

Judge Robinson: All right.

Deputy Clerk: Plaintiffs' Exhibit Number 16 marked for identification.

(Plaintiffs' Exhibit Number 16 was so marked for identification.)

Mr. Halpin: And can we also stipulate that the yellow highlighting on the letter was done by Mr. Eckert?

Mr. Stoner: Yes, sir.

By Mr. Halpin:

Q. Now, Mr. Pezant, with this document before you, is it not true that you were specifically aware of Judge West's language which is stated on page 3 of the letter that:

> "When possible, the plan should follow parish and ward lines as well as historical and natural boundaries . . ."

[372] A. Which part of page 3 are you on, Mr. Halpin?

Q. I am on the top of page 3. A. Yes, okay.

Q. Okay, second sentence:

> "But the use of such boundaries canot be tolerated if either the purpose or the result is to deprive the people of the benefit of the one-man one-vote principle, or to deprive them of the anti-dilution principle now firmly established in the law."

A. Yes, sir.

Q. Were you also then aware of Judge West's decision, Judge West's language stated on page 4 of the letter, third sentence:

> "The Senators made much of the need to adhere to historical boundaries which they assert are the ward lines in this area. The contend that any deviation therefrom is irrational and contrary to state policy; but as brought out in the evidence, it was this policy and these historical boundaries that produced but two Negro legislators since Reconstruction days."

[373] Were you aware of those guidelines in Judge West's opinion?

Mr. Treese: At this point, Your Honor, if I might, I believe the witness has testified that he has read the letter;

he is aware of it; it speaks for itself. This line of questioning simply asks whether he is aware of it again.

Judge Robinson: Yes.

Mr. Halpin: The only purpose of the question is that it is a long letter and to make sure that Mr. Pezant is aware of the particular areas of the letter to which my questions will be addressed.

Judge Robinson: How many other areas . . .

Mr. Halpin: That's the last predicate.

Judge Robinson: All right.

Judge Corcoran: Just ask him if he has read the whole letter.

By Mr. Halpin:

Q. You have, in fact, read the whole letter and based your drafting of the plan upon the guidelines stated in that letter? A. On this, plus the—I don't know what to call them, Your Honors—the rules of the Attorney General, some forty- or fifty-page submission showing what the U. S. Attorney General's Office—how they judge redistricting plans, and things of that nature.

Q. Are you referring then to procedural guidelines [374] of the Justice Department? A. All right, sir, I'll accept that.

Q. Okay now, the letter also indicates that the United States Court of Appeals for the Fifth Circuit reversed Judge West relative to four Senate districts.

Did you interpret this to mean that you could follow ward lines even at the expense of diluting black voting strength? A. No, sir. I made the statement that I observed to the best of my ability the guidelines in this (indicating the letter) plus another document or two. You have completely overlooked, at least to this point, some of the other considerations that are contained in this digest, or whatever you want to call it.

I did not think that historical guidelines could be observed to the—how did you phrase it—"at the expense of" diminution of black voting strength.

Q. Now, Mr. Pezant, is it not true that the reason that names of the incumbent councilmen with their addresses, wards and precincts were attached to this letter for—under your perception, for the reason that this was a subtle message to you to make sure that none of these gentlemen fell into the same district? A. I don't think these—I don't think so. These names were not submitted by Mr. Salatich, is this what you [375] are implying. I don't even know how it got attached to this. I didn't need any sheet to show me where the incumbent councilmen lived. I have stated in open court that I was aware of the residences—not the street addresses, but the residences of the incumbent councilmen.

Q. Are you stating that this was not attached to the letter that you received? A. To the best of my ability, this was not attached to the letter when I received it from Mr. Salatich.

Q. And you don't know how it happened to get attached now? A. I honestly don't know why it is attached.

Mr. Halpin: I have no further questions.

Judge Robinson: Gentlemen, does that complete the examination of this witness?

Mr. Treese: No further questions of this witness, Your Honor.

Judge Robinson: Beg your pardon?

Mr. Treese: No further questions of this witness.

Judge Robinson: Mr. Shurtliff?

Mr. Shurtliff: Just briefly, Your Honor.

Judge Robinson: All right, briefly, sir.

Mr. Shurtliff: If I may approach the witness (handing a document to witness).

[376] Cross-Examination

By Mr. Shurtliff:

Q. Mr. Pezant, you have referred a number of times during the course of your testimony to guidelines or materials supplied by the Attorney General of the United States.

I have handed you a document, is that the document which you have referred to, or a copy? A. Well, sir, it could be, but I have no way of knowing because the information I have is on a completely different type of print. It was not printed in this form. I have seen this for the first time. The information I received is contained in our files.

Q. Do you have that copy?

(Witness displaying document handed to him by Mr. Shurtliff to Mr. Treese)

Q. (repeating) Do you have the information that you received, sir? A. Yes, sir, I have it. We were just looking at it a few minutes ago.

Judge Waddy: Can you stipulate that this is a copy of the guidelines?

Mr. Treese: We'll stipulate.

Judge Waddy: Let it be marked.

Mr. Shurtliff: We don't know that it is.

Mr. Treese: I have seen the other document and [377] this is a better copy. We will stipulate that that's the exact copy.

Judge Waddy: Well, let it be marked.

Deputy Clerk: Defendants' Exhibit Number 27 marked for identification.

(Defendants' Exhibit Number 27 was so marked for identification.)

Mr. Shurtliff: I have no further questions, Your Honor.

Judge Robinson: I take it, counsel, that this finishes the examination of Mr. Pezant, is that correct?

Mr. Treese: Correct.

Judge Robinson: May he be excused for good in this litigation?

Mr. Halpin: There may be some possibility, particularly if there is an intervening time space, that we would call him again.

Judge Robinson: Mr. Pezant, you are excused, but you are subject to recall by the Court for further testimony in this case, in which event you will be given due notice.

Witness: Thank you, sir.

Judge Robinson: Very well.

(Whereupon, witness withdrew from the stand, having been excused by the Court.)

Judge Robinson: Now, gentlemen, we have reached [378] the point where we will have to take a recess in this trial, and it's going to have to be a sizable recess. I am going to hand list the problems with counsel in just a few minutes, since it became apparent yesterday that this trial could not possibly be completed on today, all members of the Court have consulted their respective calendars and their outstanding obligations and their plans, and the earliest date that the Court will be able to resume the trial of this case is October 17th. I appreciate the fact that that may create some problems which, perhaps, we should address at this time.

As you gentlemen know, this litigation was filed on July 25th. This three-judge court was instituted on July 30th. There was a motion to advance this case for hearing on the merits and it gave as its reason the urgency of setting the primary qualification date sometime later on this month.

In response to that request, the Court granted the motion, it set the case for hearing commencing on yesterday; it called on the parties for statements of their legal positions to be filed by day before yesterday.

I say all that, perhaps unnecessarily, because it is perfectly apparent that this Court has responded with all possible speed to the exigencies of this situation.

Now on yesterday we had this hearing commenced, the Court was careful to make inquiry as to what the time demands would be. Counsel gave the Court estimates that in toto two [379] days time would be required. The Court facing some difficulty in doing even this, managed to clear the two days.

At that time on behalf of my colleagues, I warned counsel, as I thought they were entitled to know, that if the estimates did not stand up, there would be difficulty with

reference to completing the trial of this case because that was all the Court could do.

Now it is apparent that that simply was not enough time. This is an important case.

Counsel, the Court knows, have cooperated in every possible way to proceed as expeditiously as possible, but a case of this sort simply takes time to present, and it goes without saying that this Court will have to be indulged a reasonable opportunity to decide this case once the submissions have been completed.

We have taken all that into consideration and it is simply not possible for the Court to reconvene for the purpose of this litigation until October 17.

Now it seems to me that a few suggestions would be in order: (1) —and I have not consulted with my colleagues on this, the Government has not filed any answer. It seems to me to be desirable to have the Government file an answer; we have a statement of your position, Mr. Shurtliff, but can't you get an answer in and can't you get your answer in much less than the normal sixty days that you would have to respond?

[380] Mr Shurtliff: Well, Your Honor, we will do that.

Judge Robinson: Very well. I take it that with the Government's answer getting in, we would need nothing further to complete the record insofar as the pleadings may be concerned, is that correct, gentlemen.

(All counsel nodded in the affirmative.)

Judge Robinson: All right. Now, I suppose some consideration should be given to the problem which is occasioned by the apparent need, although I understood on yesterday from representations by counsel that it turns out to be certainly something less than an absolute need, for the setting of qualification dates some time later on this month or the first of September, and even more particularly, the November primary because with a resumption date in October, there is only a relatively small space of

time until—when is it, November 10th, when the primary is to occur.

And perhaps looming large in all of this is the effect of the litigation pending in the Eastern District of Louisiana, which came to my attention, and I believe to my colleagues, only on yesterday.

Now, gentlemen, we are anxious to cooperate in any way we can, but that is the situation. If there is anything to be addressed to the Court, anything that we might be helpful on, we are here to do it and to do it now.

Mr. Stoner?

[381] Mr. Stoner: Yes, Your Honor. We have anticipated the problem that the Court has addressed itself to and we have prepared an order, extending into the future, the qualification date which presently is set, I understand, at August 31st, 1973. And I would submit . . .

Judge Robinson: Instead of September the first.

Mr. Stoner: Yes . . . I would submit to the Court a proposed order as to the date.

Judge Robinson: Would you give us an opportunity to look at it.

(Mr. Stoner handed document up to the Court.)

Judge Waddy: I would also like to know from counsel whether or not the Eastern District of Louisiana has set any date for the plan that it has ordered to a master for the presentation of such plan.

Mr. Stoner: Your Honor, I have been informed that a master has been appointed by that Court and that the master has been requested to—or will commence hearings with respect to a proposed plan as of Tuesday of next week.

(Addressing other counsel) Is that correct?

Mr. Halpin: That's not quite correct. My understanding with everything I've gotten from that Court so far is that the Court has stated its intention to appoint a master and will formally issue an order appointing that master soon.

[382] And it is further my understanding, and I think

Mr. Salatich was present in the conference there, that the Court's appointment of a special master in that case is purely as a precautionary measure and that is that when —that if there would be the possibility, that there would be the necessity for the Court to develop a plan, that it would do so; but if the Court was fully anticipating, as we were, that this litigation was going to be completed within time, and so our position, we also represent the plaintiff in that Court, aud our position in the Eastern District will be that that Court should hold in abeyance whatever action relative to drawing a plan and it would be further our position in this Court.

Judge Robinson: Pending what determination?

Mr. Halpin: Pending the determination in this Court to avoid the judicial conflict. It would be further our position in this Court that this Court should not only enjoin the qualification date as proposed in the order, but should at this time enjoin the election for all members of the City Council until this case can be heard and fully determined.

Then we will move in the Eastern District to have that Court hold its action in abeyance, which it has no jurisdiction over enjoining the election to begin with. This Court has that jurisdiction and could do it.

[383] Judge Robinson: Mr. Shurtliff——

Judge Waddy: Had you finished stating your position, Mr. Stoner?

Judge Robinson: Mr. Stoner's request had . . .

Judge Waddy: Had you finished your . . .

Mr. Stoner: Oh, no, I had not.

Judge Robinson: Oh, well, go ahead.

Mr. Stoner: No, I had not. I addressed myself only to the continuance of the qualification date.

We would like to—we would agree with the handling of the litigation in the Eastern District. We would ask this Court to enjoin that Court from proceeding further with that case until the matter here before this Court is disposed of.

We believe that this Court . . .

Judge Waddy: The best thing to do would be to enjoin the parties.

Mr. Stoner: Enjoin the parties, that's right.

Judge Waddy: I don't know about enjoining the Court (smiling).

Judge Robinson: Don't we have before us at the present time all who are parties in the Eastern District of Louisiana?

Mr. Halpin: Yes, sir.

Judge Robinson: You—and when I say "you", I'm [384] speaking to counsel for the intervenors, who are counsel for the plaintiffs in that case . . .

Mr. Halpin: Yes, sir.

Judge Robinson: . . . it is your disposition to delay further proceedings in that case pending the consideration and disposition of this case?

Mr. Halpin: Yes, sir.

Judge Robinson: Can't you gentlemen make a stipulation here and now that you are going to do that and let's get that problem behind us?

Mr. Halpin: I can certainly agree to that, Your Honor. I think that Mr. Stoner, and so forth, can, too. There is —one of the problems in this particular case has been that the City Counsel was never quite sure who was representing them, and so forth and so on. I think Mr. Salatich represents some and not the others.

Mr. Salatich: If I might make a point . . .

Judge Robinson: Yes.

Mr. Salatich: All counsel in the Eastern District of Louisiana are not here. I represent the mayor and the City of New Orleans in that particular litigation. Altogether there are ten different defendants, the City and the mayor, the City Attorney's office represents . . .

Judge Robinson: I see.

Mr. Salatich: . . . the Council itself is represented [385] by counsel that was appointed last Wednesday morning. They are not here. The attorneys for the individual councilmen are not here. And we only have in reality here as

far as the defendants are concerned attorneys for only two of those defendants.

Judge Robinson: Why can't this be done, gentlemen. All counsel, and I take it all litigants are right here in New Orleans, right?

Mr. Halpin: Yes, sir.

Judge Robinson: You wouldn't anticipate, would you, gentlemen, there is going to be any objection to the suggestion of Mr. Halpin and his associates that that litigation be held—I mean nobody's going to kick about that, I suppose—why don't you gentlemen get together and fashion a stipulation and forward it on to the Court as soon as it conveniently be done, and that will solve that much of the problem.

Is that suggestion acceptable to all concerned?

Mr. Gorman: Your Honor, the United States really doesn't have much stake in whether or not the mayor and the Louisiana Court . . .

Judge Robinson: You are not involved in that at all, as I understand it?

Mr. Gorman: No, Your Honor, but I think we have an obligation to the Court to advise you that under Section 5 [386] it may be that this Court has limited authority and the matters before this Court are for either the entry of declaratory judgment or denial of declaratory judgment.

It is quite clear by operation of law under Section 5, that they do not hold re-election under using the plan . . .

Judge Robinson: That's the matter I thought we were going to get to, but the plaintiffs and the intervenors and the Court, as well, had a little anxiety as to what was going on in the Eastern District of Louisiana while the case was pending here. The suggestion made by the Court was simply to put that matter at rest so that we could get that behind us and get to the other problem to which you are addressing yourself now.

Mr. Gorman: You are talking now about the plaintiffs and the intervenors agreeing in the District Court in Louisiana?

Judge Robinson: No, they will agree among themselves that no further proceedings will be sought or had in the litigation pending in the Eastern District of Louisiana pending the consideration and decision of the case before this Court.

Does that put it accurately, gentlemen? Is that the understanding?

Mr. Gorman: We have no problem with that, Your Honor.

[387] Judge Robinson: Very well, I wouldn't have thought that you would.

Is that the understanding, gentlemen?

Mr. Halpin: That's the understanding. There could be some possibility that it would be of some advantage to allow the special master, just as a preventive device, to start developing a plan, while we are moving so . . .

Judge Robinson: My purpose at this time, Mr. Halpin, is simply to explore the possibility of the parties agreeing. If the parties can't agree, that's another matter the Court would have to deal with in a different way; but I had gathered based on the representation that you, yourself, made.

Mr. Halpin: Yes, it is possible to agree and . . .

Judge Robinson: . . . and this was the easiest way to put this matter at rest, at least for the duration of this litigation.

The only thing that I am asking for now is my statement of the Court's understanding as to whether the agreement is accurate.

Mr. Halpin: It is accurate.

Judge Robinson: And you gentlemen will get together and fashion a suitable stipulation in New Orleans to that effect and forward a copy on to this Court.

Mr. Halpin: Yes, sir.

[388] Judge Robinson: Is that agreeable to you gentlemen?

Judge Waddy: That will be staying the proceedings in the Eastern District of Louisiana pending disposition of this matter.

Mr. Stoner: Yes. Now, Your Honor . . .

Judge Robinson: Now that brings us to a different matter, and counsel for the defendants have sort of brought it up. I take it is the same matter which you are about to address yourself, Mr. Stoner.

Mr. Stoner: Well, I was merely going to state to the Court that we were going to ask the Court to enjoin the plaintiffs from proceeding further in that case until disposition of this case.

Judge Robinson: I thought that that was settled, that they are not going to do anything further. Is that not agreeable?

Mr. Stoner: Yes, Your Honor.

Judge Waddy: You don't need to do anything if you are going to stipulate to it.

Mr. Stoner: All right, I can state that on behalf of the six members of the City Council that we represent, there is no problem in stipulating to that effect.

Judge Robinson: Well, I understand that some of the defendants are not here; it would not seem that they would interpose objections. If they do and you gentlemen have problems, [389] you will simply have to address the Court again and the Court will have to deal with it.

If, however, the stipulation holds, it certainly seems to the Court that it takes care of the problem for the immediate future and I understand the parties who are present here in the courtroom today are similarly satisfied.

Now, Mr. Stoner, we have . . .

Judge Waddy: Just a moment, Mrs. Marshall has to add more paper.

(Whereupon the judges conferred privately off the record while the court reporter changed paper.)

Mr. Gorman: Your Honor . . .

Judge Robinson: Is this Mr. Gorman?

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Would you come to the lectern, please?

(Mr. Gorman approached the lectern.)

Mr. Gorman: I don't mean to make a very complex problem more difficult, but I believe that there may be problems with this Court's jurisdiction in enjoining an election in Louisiana under the circumstances.

Judge Robinson: I thought what you had said was that as matters now stand, Section 5 of its own force bars the plaintiffs from holding any election of members of the Council under the plan, that is the plan that is now before the [390] Court which recently was disapproved by the Attorney General.

Judge Waddy: It's in the statute itself.

Mr. Gorman: But that does not bar the City Council in New Orleans from holding an election, and in fact it may be required by state law to have an election as of a specific time of the year.

Judge Robinson: You are saying the election could be held on the basis in existence in 1964?

Mr. Gorman: Yes, Your Honor, and I presume, also, that because of the operation of the state law and the City Council Charter, or the City Charter of New Orleans, it has already been discussed here, there is an obligation to have elections after the decennial census is taken.

Judge Robinson: After a what?

Mr. Gorman: After a decennial census is done on an equally apportionment basis. This has not been done, so it is a clear conflict. If they have an election under the old rules, it will violate the City Charter and probably state law. They can't have an election under the new zones because it's prohibited by Section 5.

Now therefore, merely saying that they can't have a new election under the new lines does not solve all the problems. It may be appropriate because there is a case pending in the District Court of New Orleans for the parties in that litigation to iron out the state law on questions con-

cerning [391] holding elections at all this year. I believe that under Section 5, the responsibility of this Court is already met by prohibiting them from having elections propriety, perhaps, rather than jurisdiction, and this

There are two questions basically, and it is a matter of Court in the jurisdiction where the change had been made. under the new plan. And I just point this out . . .

Judge Robinson: Well, let me see if I am clear. There, of course, is the barrier erected by Section 5, the new plan, the plan before the Court, has been disapproved by the Attorney General; it has not, at least to this point, been approved by this Court. So Section 5 prohibits the use of that plan in connection with a municipal election.

Are we in agreement?

Mr. Gorman: That's correct, Your Honor.

Judge Robinson: Now you are suggesting that beyond the prohibition of the statute, it would be necessary for this Court to fashion an additional prohibition in terms of an injunction that would restrain the conduct of an election pursuant to that plan?

Mr. Gorman: I am suggesting that this Court may not do that.

Judge Robinson: May I ask—now it has been done, for example, in two recent cases in this Court, the Petersburg case and the Richmond case, am I correct?

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Why was it done in those cases?

Mr. Gorman: Under the circumstances present in those [392] cases, there was not a suit pending in the Federal Court will decide whether or not a declaratory judgment will be entered with respect to the new ward lines or district lines in New Orleans. The suit pending in District Court in New Orleans has as its gravamen what the lines will look like if different districts are drawn, and therefore it may, I believe, be more appropriate for the District Court in New Orleans to make a determination whether or not any election should be held this year using the old lines.

Judge Waddy: Mr. Stoner.

Mr. Stoner: Yes, Your Honor, may I address myself to that question?

I don't know the Louisiana law, but it would seem to me that the Council of the City of New Orleans having adopted the new plan of redistricting, the old plans of the previous districts are really inoperative and no election could be held under the old plan because there is no districting under the old plan after the present councilmen's terms expire.

Judge Robinson: What you are saying is the old plan has been repealed and the second plan, although in a disapproved status, is adopted, is that it?

[393] Mr. Stoner: Yes.

Judge Robinson: Excuse me, just a moment.

(The Three-Judge Panel conferred privately off the record.)

Mr. Gorman: I think Mr. Stoner is incorrect on that.

Judge Robinson: He is correct, or incorrect?

Mr. Gorman: I think he is incorrect on that legal conclusion; I believe under Section 5, the administration or the implementation of the new voting law is prohibited until it is reviewed either by this Court or by the Attorney General and no objection is interposed, or a declaratory judgment . . .

Judge Waddy: I think we all agree to that.

Mr. Gorman: But that does not repeal pre-existing laws.

Judge Robinson: Well, isn't that a question of Louisiana law?

Mr. Gorman: But, I believe what will occur is that the repeal of the existing boundaries, districts, was made in conjunction with the adoption of the new districts, and therefore, —because Section 5 prohibits the new districts, therefore the whole enactment is invalid.

Mr. Stoner: Are you saying that it is really a conditional —this is a conditional operation of the new plan and it just conditionally repeals the old plan?

[394] Mr. Williams: Well, I researched this issue, may it please the Court . . .

Judge Robinson: Is this Mr. Friends?

Mr. Williams: No, I'm Charles Williams.

Judge Robinson: Very well.

Mr. Williams: I researched this issue sometime ago and I don't have the cases here, but within a short period of time I might be able to find the cases.

However, my understanding basically is the same as the Government's, that the idea was until such time as the plan that in a state that is covered by the Voting Rights Act is approved either by the Justice Department, or by the District Court, it, in effect, is not a law; it has not come in to replace it. I don't think it has come in now—I don't think you could say at this time that the old law has been repealed and I think that's a possibility that if it does not clearly enjoin the election, they could have an election under the old law.

Judge Robinson: Let's go back just a moment. It is clear that the plan before the Court cannot be used at the moment as a basis for election.

Mr. Gorman: Right.

Judge Robinson: Now the further question is whether there can or cannot be an election on the basis of an older plan, or on the basis of a newer plan, newer even than the one before the Court, it seems to me, is not the business [395] of this Court, at least not at this time. Isn't that it?

Mr. Gorman: I agree, Your Honor.

Judge Robinson: Is that what you are saying?

Mr. Gorman: Yes.

Judge Robinson: Would you agree to that, Mr. Stoner?

Mr. Stoner: Yes, Your Honor.

Judge Robinson: That's not within the purview of our authority in reviewing the plan which the Attorney General has now disapproved. It suffices for our purposes when we recognize that unless and until that plan is approved by this Court, the citizens of New Orleans can't employ it in

connection with the election of members of the City Council.

Now what the citizens of New Orleans may do, or may not be able to do, is another matter that is simply not before this Court. Is that correct?

Mr. Stoner: Yes, if Your Honor please.

Judge Robinson: Now, you, however, Mr. Gorman, had some idea that, perhaps, the parties need not be so hasty on their stipulation with reference to staying the proceedings in the Eastern District of Louisiana, because, perhaps something could be worked out there in terms of the new election, is that correct?

Mr. Gorman: Yes, Your Honor, and that, of course, is up to those parties and we have no interest in that.

However, I wanted to point out the complexities [396] of the problem to the Court, so that we would be aware of them . . .

Judge Robinson: Well, I would like to ask one other matter in which the Government would certainly have a vital interest. I don't know whether counsel representing the plaintiffs are in a position to make any representations, or not, as to whether there will be or will not be any elections in New Orleans based on the plan that the Attorney General last disapproved.

Are you in a position to make any representation in that regard?

Mr. Stoner: Well, I (pausing in thought) . . .

Judge Robinson: As to whether or not you are going to violate Section 5, that's really what my question gets down to.

Judge Waddy: Well, I understood Mr. Gorman to say a little while ago that he didn't intend to proceed under the new plan.

Mr. Stoner: That's right.

Judge Waddy: The question that I'm concerned with is whether or not they intend to proceed under the existing districting, or the districts which were in existence, at least, before they decided the new ones.

Judge Corcoran: That's a question for the Louisiana Court.

[397] Mr. Stoner: Yes, that's a matter of Louisiana law.

Judge Waddy: That's a matter of Louisiana law, too, but I am asking whether or not you have any information for this Court as to the plan.

Mr. Stoner: I have none. The reason the plaintiffs have brought this suit is that they wanted to have this matter determined so that they could proceed to hold elections under the new plan in November.

Judge Robinson: Let me get—let us understand. That was my understanding. Let me cut through this a little bit and get down to what I am driving at.

Is any injunction from this Court necessary? If so, why is it necessary? We have the barrier of Section 5. There is nothing before the Court that would indicate that anybody is going to try to disobey Section 5. Why do we need to enjoin it?

Mr. Gorman: Your Honor, we believe that absent some substantial evidence that one of the parties will violate Section 5.

Judge Robinson: You don't even have any threat of that, but if the situation did change from the viewpoint of the Government or perhaps from the viewpoint of the Intervenors, it would appears o be a need for injunctive relief, you could come right back before the Court and we could hear [398] you at that time.

Mr. Gorman: Yes, Your Honor.

Judge Robinson: Would that satisfactorily from all viewpoints put to rest at this point in time, at least, the question of any need for any injunctive relief at the hands of this Court?

Mr. Gorman: No, sir.

Judge Robinson: You've got some problem?

Mr. Halpin: I think that if the parties here are generally willing to indicate that they would not violate Section 5, it would certainly do no harm to have an injunction issue. It may be dealing with political bodies of this sort; it may

be a lot easier from the point of view of the City to have an explicit order enjoining them from conducting these primary elections, so forth and so on, because you do have other people involved who are not really parties in this case, but who would be better put on notice of an injunction; for example, the Democratic Executive Committee has the responsibility for calling primary elections, and there are a lot of other officials involved in this, and it is my feeling that a specific injunction from this Court would clarify matters a great deal and would not be opposed by these parties.

The second point is that we indicated that we would stipulate to holding the matter in abeyance in New Orleans, but under the assumption—and I want to make it clear—that [399] the plaintiffs in this case, the City of New Orleans, does not attempt to hold any elections; that is, that they would not attempt to hold elections, say, under the old mal-apportionment plan or run elections at-large, or . . .

Judge Waddy: Isn't that a matter for the Louisiana Court?

Mr. Halpin: Yes, sir, but I just wanted to make it clear to this Court that when I said that I would stiuplate to holding things in abeyance, it's for this Court's information so that it won't consider that I am breaking my word to this Court that that is the implicit assumption to my agreement.

Judge Robinson: Did you wish to speak on this, Mr. Stoner?

Mr. Stoner: I might say that I believe an injunction with respect to elections would be preferable.

Judge Waddy: The only basis we would have for an injuunction would be to protect our own jurisdiction. There is not even any threat as we understand it, at present to use this proposed plan.

Judge Robinson: Before we rule on this, I want to finish this. Mr. Gorman has been trying to get to the lectern on a few comments.

Mr. Gorman: Your Honor, our only point is we don't express any view on the old plan, the plan pre-existing [399(a)] under Section 5, or on a plan that might be worked out in the Eastern District of Louisiana. We are merely concerned with this Court entering an injunction that may have an effect on the litigation in Louisiana and I would think that the Court should be aware of possible problems before it does it.

Judge Robinson: Well, this Court has not at any time, so far as I know, Mr. Gorman, indicated any injunction it would possibly issue would do more than restrain the conduct of an election on the basis of the plan that is now under review by the Court.

Now does that create a problem?

Mr. Gorman: That would create no problem.

Judge Robinson: Now counsel for the plaintiffs wish such an injunction as do counsel for the Intervenors. Now what do counsel for the Government wish in this regard, an injunction or no injunction?

Mr. Gorman: Your Honor, we don't believe an injunction is necessary and we think that an injunction may be misinterpreted by either the citizens or the Court.

Judge Robinson: In what respect?

Mr. Gorman: In that it may be considered an injunction against holding elections at this time because this Court . . .

Judge Robinson: No, any injunction that this Court writes is going to be clear as to what is going to be restrained, [399(b)] so that is not going to be any problem.

Now what's the Government's view?

Mr. Gorman: We don't think it is necessary, but we have no opposition to it.

Judge Robinson: You have no opposition to it?

Mr. Gorman: No, Your Honor.

Judge Robinson: You gentlement want to get together and fashion an agreement in this regard and ask the Court to put its endorsement on it as a process agreed to by the parties?

Judge Corcoran: It would help as a practical matter. That's all it amounts to, it gives public notice.

Judge Robinson: This is all we have been talking to, whether we need to do it. I had originally thought that nobody thought that there was need. Now I understand that both the intervenors and the plaintiffs feel that there is a need and that the Government has no objection to it. That's the situation.

If you gentlemen want to do it by agreement, can you get together and can you get agreed upon the form of the injunctive order that you want submitted to the Court for its consideration?

Mr. Gorman: I should think we would be able to, Your Honor.

Judge Robinson: Now how fast can you do that?

Mr. Gorman: A couple of hours.

[399(c)] Mr. Stoner: By early part of the week?

Judge Waddy: Monday morning?

Mr. Stoner: The early part of the week.

Judge Waddy: I understand that the parties are going to do two things: (1) all of the parties are going to get together and work out a form of an injunction staying any proceedings with the use of the proposed plan; (2) the Intervenors and the defendants in the Louisiana case will submit to the Court a stipulation which they will work out with respect to how the Louisiana case will proceed from here on.

Am I correct?

Mr. Halpin: Yes, sir. I wanted to ask one more question of plaintiffs in this regard.

Is it your understanding that your parties will be able to stipulate in the New Orleans case that no elections will be held at the regularly scheduled time?

Mr. Stoner: We have not specifically addressed ourselves to that, I mean, these are the council—me and the plaintiff —however, we have been proceeding with the expectation that no election will be held under the old plan. The City

Charter requires that the city be redistricted following the decennial census.

Mr. Halpin: That's not my question.

Mr. Stoner: Since this plan is inoperative, it would be obvious that no election can be held.

[399(d)] Mr. Halpin: Under any plan?

Judge Corcoran: No, just under this plan.

Mr. Halpin: That's what I am trying to clarify.

Judge Corcoran: He is reserving the right to go ahead under the . . .

Judge Waddy: Well, if the November elections were postponed, special elections could be held, could they not?

Mr. Halpin: I was anticipating—what I am trying to get a qualification on is I was anticipating a problem with these two Courts may be in conflict, and that is, should the defendants in the New Orleans case, or the Court itself, moved to adopt a plan, say, which retained two at-large seats, but drafted into five single-member districts, we would consider that to be the plan which had been objected to under Section 5 since that was part and parcel of the plan before the Department and then we would be in the position of maybe having to ask this Court . . .

Judge Corcoran: You can't solve that case.

Judge Robinson: That's another plan.

Judge Waddy: That's another case.

Judge Robinson: That is not a plan before us.

Mr. Halpin: That's an issue before this Court, that we are trying to bring before this Court, that is, whether those two at-large seats are part of a voting change which must be considered by this Court in determining whether they are [399(e)] racially discriminatory . . .

Judge Waddy: I would think your answer will be found in the Allen case.

Judge Corcoran: We reserved on that. We haven't ruled. And anyway I'm not going to let this Court get involved with the Louisiana Court. We have no business down there.

Mr. Halpin: Well, that's what I was trying to avoid.

Judge Robinson: The only possible subject of an injunction at the present time would be an election pursuant to the plan now before this Court. That is the only plan that is before this Court. Any injunction that we enter, certainly at this time, will have to be limited to it.

Mr. Halpin: I think we could still make argument, if the time came, Your Honor, be part and parcel of the plan of the two at-large elections, that we want to enjoin the election with respect to that.

Judge Robinson: You are addressing yourself, Mr. Halpin, to a situation that may or may not occur, that is, at some future time, another plan will come into existence and you will have problems with it.

Judge Waddy: In Allen tells you exactly what to do with it.

Judge Robinson: Certainly at this time we don't have that question before us.

[399(f)] Mr. Halpin: At least, I want to raise it before the Court . . .

Judge Robinson: Now, gentlemen, just a moment.

(The 3-Judge Panel conferred privately off the record.)

Judge Robinson: Gentlemen, I have conferred with my colleagues. We will expect the consent judgment to be presented to the Court by 12 noon on Monday. Is that agreeable to you, gentlemen, 12 noon on Monday?

(All counsel nodded in the affirmative.)

Judge Robinson: Just as a reminder, might I say to you, you might get some assistance in this regard from the injunctions which were entered in the Petersburg and Richmond Cases; perhaps, they will afford you something to trade on.

At this time, gentlemen, is there anything further for the Court to consider?

Mr. Treese: There is one matter that is consistent with the Court's approach to this case, in view of the delibera-

tion and slowdown at this point for all to review them in depth, I wonder if the discovery might remain open?

Judge Robinson: Certainly, it will remain open. I thought it went without saying, the ready why you didn't have more ample opportunity. I just wanted to accommodate you.

Mr. Treese also made some other point on a more [399(g)] deliberative basis and this case is probably going to be helpful on this question.

Gentlemen, make your presentations, make them full, we've got to have a reasonable opportunity to decide the case and decide it soundly. Nothing else is going to be in the interest of the six hundred thousand citizens in New Orleans if it falls short of that, and certainly, that will be the Court's objective.

There being nothing further, gentlemen, this trial will be adjourned until 10 o'clock October 17.

(Whereupon, the Court adjourned at 5:32 p.m.)

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[400]

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Wednesday, October 17, 1973

Washington, D. C.

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[401] PROCEEDINGS

(The Three-Judge Court convened at 10:05 A.M.)

Deputy Clerk: Civil Action No. 1495-73, The case of Peter H. Beer, et al. versus United States of America, et al.; Mr. Stoner, Mr. Treese, and Mr. Salatich for the Plaintiffs; Mr. Shurtliff and Mr. Friends for the Defendants; Mr. Halpin and Mr. Cotton for the Intervening Defendants.

Judge Robinson: Gentlemen, are you ready to proceed?

Mr. Treese: We are, Your Honor.

Mr. Shurtliff: We are, Your Honor.

Mr. Halpin: Yes, Your Honor.

Judge Robinson: At the outset, there are two matters the Court would like to take up preliminarily; one is this, it's the Court's recollection that there was a colloquy with counsel when we were last here on this case relative to the ordering of transcripts. One day's proceedings last August has been transcribed and that transcript has been made available to the Court. It is the Court's understanding, however, that no order for the transcription of the second day's proceedings has been placed. The result is that the Court is at the moment is without a transcript of the second day's proceedings.

Now are we correct in our understanding that counsel are making arrangements with the reporters to transcribe all proceedings in this trial?

Mr. Treese: That was my understanding as we left, Your Honor, that we had asked for a transcript of all proceedings, [402] and we, like the Court, have only received the first day's proceedings.

Judge Robinson: Well, would counsel get together at the first convenient time among themselves and with the court reporters and make the necessary arrangements.

Mr. Treese: Yes, sir, Your Honor.

Judge Robinson: The second thing, gentlemen, is this, it would be helpful to us if we had a better idea than we now

have as to what your respective estimates of the amount of time your feel will be required in order to complete this trial.

Mr. Stoner, could you give us the prognosis from the Plaintiffs' viewpoint?

Mr. Stoner: Yes, Your Honor, we believe that we will be finished by noon tomorrow. We will have one witness who is coming in from New Orleans. We may offer that person as a witness tomorrow and in that event, his testimony would be taken in the morning with the Court's permission, And we believe that our testimony today can be concluded with the exception of that possible witness.

Judge Robinson: Very well, Mr. Shurtliff, how about the Government?

Mr. Shurtliff: May it please the Court, we have four witnesses; we have deposed three of those witnesses and based on the depositions, and the time it took, I would estimate that the taking of testimony from those four witnesses would take [403] just over a day, possibly a day and a half; that would be examination and cross-examination.

Judge Robinson: In view of the fact that three of the four witnesses have been deposed, did you say?

Mr. Shurtliff: That's correct, Your Honor.

Judge Robinson: Is it possible for counsel to shorten that phase of the trial by stipulation, or otherwise? Is this formal material, Mr. Shurtliff, that possibly on the basis of the stipulation for use by the Court of the depositions in lieu of Ortinez's testimony?

Mr. Shurtliff: If I may, Your Honor, all right.

Judge Robinson: Well, I won't press you for an answer at this moment, but if you yet us know as soon as you could. Are matters of credibility involved, for example, that may affect your decision? If you will let us know at your earliest convenience, it will bt helpful.

Mr. Shurtliff: Yes, Your Honor.

Mr. Treese: May we explore that at the first break, Your Honor?

Judge Robinson: Yes.

Mr. Halpin?

Mr. Halpin: I would anticipate our case would take less than one-half day, it would dtpend, of course, on the evidence that would be put on by the principal Defendants.

Judge Robinson: Very well.

[404] Mr. Stoner, one further question to you, have any of the witnesses you propose to use from now on been deposed?

Mr. Stone: Yes, they have, Your Honor. Several of the Councilmen whom we plan to call have been deposed, yes, sir.

Judge Robinson: Would your next witness be a witness who has been deposed?

Mr. Stoner: Yes, he would be. The next witness we propose to call is from the planning staff of the City Council Planning Staff. He has been deposed, yes he has been.

Judge Robinson: Do you think the suggestion I made moments ago might be a possibility with reference to that and any other witness—that witness and any other witness you may have to present?

Mr. Stoner: It's a possibility. May I confer?

Judge Robinson: Gentlemen, how long would it take you to confer on the whole matter of using all or portions of deposition testimony in lieu of trial testimony?

Mr. Treese: I think we could resolve that in five or ten minutes, Your Honor.

Judge Robinson: Very well. At this time, Marshal, the Court will stand in recess until further ordered.

(Whereupon, the Court recessed at 10:15 A.M.)

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(The Three-Judge Court reconvened at 10:32 A.M.)

Mr. Treese: May it please the Court, during the break all [405] counsel have gathered and we have agreed to introduce all of the depositions that have been taken in

this case as joint exhibits with prospective consecutive numbers. I have asked the Clerk, also, during the break whether the Court has actually received the originals from New Orleans. I would have to actually check that to see that the Court has actually gotten these depositions.

With regard to shortening the trial with regard to stipulating to the contents of these depositions, we can only predict that there will be some witnesses we will now not call as a result of our conference and the testimony to be offered live in Court will probably be greatly shortened as a result of this stipulation. But we do intend to call some live witnesses now. I would predict at this point that the number of live witnesses to be called by the Plaintiffs will be three in number.

Judge Robinson: Very well. Let me ask one question about the stipulation. It is, I take it, that the testimony given by the witnesses as deposed will be submitted to the Court and may be accepted by the Court in lieu of testimony at this trial, is that correct, is that the substance of it, the purport of it?

Mr. Treese: That was our intention, however, there will be, perhaps, some overlap with the live testimony that is presented in open-Court.

Mr. Treese: That was our intention, however, there will be, perhaps, some overlap with the live testimony that is presented in open-Court.

Judge Robinson: I understand that, but the stipulation on [406] the part of counsel goes only to that extent, but it leaves the Court free to accept any any all of the deposition testimony just as though the witnesses have testified personally at trial.

Mr. Treese: That's my understanding.

Judge Robinson: Very well, Mr. Treese. Do other counsel have other comments in this regard?

Mr. Shurtliff: May it please the Court, because of the stipulation, the United States will call only two witnesses live instead of the four as we had previously planned. Consequently, I would think that it might be a half-day or a

little over a half-day for those two witnesses, Your Honor.

Judge Robinson: Very well. Mr. Halpin?

Mr. Halpin: Our witnesses will be called, but we anticipate that their testimony will be a good deal shorter.

Mr. Treese: If it please the Court, I have another matter which I wish to call to the attention of the Court. I received notice from the District of Columbia Court of Appeals of a hearing before them scheduled for this afternoon. I wrote a letter notifying them of the resumption of our trial. I received a letter from the Clerk asking me to advise the Court of the local rule now that a trial in progress will be held in abeyance for any appellate hearing. They are doing this Court the courtesy of scheduling us first this afternoon at 2 o'clock. I would predict that I could be back here within a half hour; [407] it's a very short matter.

Judge Robinson: You are not suggesting that we suspend in view of the fact that you have co-counsel, are you? Would it be necessary for the Court to do that?

Mr. Treese: If we complete the first witness this morning, I would say that co-counsel could certainly carry on without any problem.

Judge Robinson: All right, you let us know before we recess for lunch.

Mr. Treese: Yes, Your Honor.

Judge Waddy: If you had followed the prediction that you made, you have to complete the first witness this morning.

Mr. Treese: I will try to hold to my prediction, Your Honor.

Judge Robinson: All right, gentlemen, you may call your next witness—just one moment.

(The judges conferred privately off the record.)

Judge Robinson: You may call you first witness.

Mr. Stoner: May it please the Court, the Plaintiffs will call as its next witness Mr. John Eckert and Mr. Treese will examine.

Judge Robinson: Very well.

Whereupon,

Jonathan A. Eckert

took the stand, and being duly sworn, was examined and testified [408] as follows:

Direct Examination

By Mr. Treese:

Q. Mr. Eckert, would you state your complete name and present residential address. A. Jonathan Allen Eckert, 4602 Carondelet Street, New Orleans, Louisiana.

Q. What is your occupation, sir? A. I am an administrative analyst to the City Council Research Staff.

Q. When did you begin that job? A. In October of 1971.

Q. Do you hold any degrees from any colleges, universities? A. Bachelors in Business Administration from Loyola University in New Orleans.

Q. Are you pursuing any other education? A. Yes, I am in my third year of law school at Loyola; it's a four-year curriculum.

Q. Taking you back, Mr. Eckert, to the time when you began your employment with the Research Staff of the City of New Orleans Council, what were your functions on the staff at that time? A.Well, I had general assignments, which is to say, ad hoc type of things, general research. I was given the major responsibility insofar as redistricting efforts of the City [409] Council. This took up that is to say a great deal of the time, although there was other work, other things to be done.

Q. All right, now directing your attention to that portion of your duties dealing with the redistricting function of the Council, at the time you joined the staff, was the staff in receipt of the decenial census information it needed to pursue this redistricting? A. I believe the receipt by the City Council of the third-count census tapes, the computer printout, that is which is supplied by both the city demonstration agencies and model cities, coincided when I first started to work. In other words, when I went there, that same day, I believe, we received third-count census tapes.

Q. Who directed you to begin developing plans or concepts for the redistricting of the City of New Orleans? A. James N. Peyzant, my immediate supervisor, and he sent me to do certain tasks with regard to redistricting.

Q. And who on that staff worked on this project? A. Prior to my working on it?

Q. Let's take it from the time when you began, who was working on this project? A. I was, essentially, the only one doing the statistical work on it.

Q. Let's take it from the time when you began, who was working on this project? A. I was, essentially, the only one doing the statistical work on it. Mr. Peyzant, of course, looked over things and had comments to make.

Q. As a result of this direction from Mr. Peyzant, what [410] did you next do with regard to the redistricting of the City of New Orleans? A. Prior to my employment, certain concepts had been developed which were based on the second-count census data. Upon receipt of the third-count census data, we set about compiling ward totals based on the third-count census data which was impractical to do using second-count census tapes.

Q. And when you talk in terms of totals, are you talking in terms of population? A. Yes, sir.

Q. Now with the statistics that you had available at the time you were developing the concepts, were there any other considerations on your part, or on the part of the staff, in the development of the concepts, or plans for redistricting? A. Mr. Salatich had sent us, what we called them, guidelines from the Attorney General's office which deals with Section 5, the Voting Rights Act. Also Mr. Salatich provided the Council's staff and the City Council with a digest of Judge West's opinion in the Louisiana Legislative Reapportionment Case.

In general, we sometime talked to Mr. Salatich about the way things should be done and he would always stress that we shouldn't have unusual district shapes or a star-shaped district, things with a lot of protrusion for no apparent reasons. We talked to him about the possibility of, say, splitting precincts, [411] whether or not it would be feasible, and generally he said it wouldn't be a good idea to do things like that. So, yes, I suppose we had some guidelines with them.

Q. Did you consider racial composition? A. Well, initially, we were working out these concepts. We were doing it on the basis of total population because at working on these things, you don't add up totals and add up whites or blacks; you start with totals and the next step is to determine population by ethnic groups. So initially, we were just working on total population and later on we went on to do blacks.

Q. By saying—by your testimony initially, you were considering only total population, were you trying to achieve a balance within the five councilmanic districts by number? A. Right.

Q. Was that what you were trying to do? A. Right, that is the charter requirement.

Q. All right, can you recall mathematically what that number was, your goal per district? A. About 118,694.

Q. About 118,694? A. Yes.

Q. All right, now after you had developed the mathematical division and you had the guidelines of Mr. Salatich—by the way, that's Mr. Ernest Salatich? [412] A. Yes, Assistant City Attorney.

Q. Yes, and you had considered the compactness and so forth? A. Yes.

Q. Did you have available any registration statistics within the City of New Orleans? A. There were voter registration statistics in the office. Initially, again, we didn't use them; we were more concerned with total population.

Q. Now in this first evolution of preparing conceptual plans, or concepts, or whatever you want to call them, how

many distinct concepts grew out of that? A. Approximately eight or nine had been prepared based on second-count data. There were revisions of the second-count data so that adjustments could be made to precinct boundaries. So essentially, I believe we were still working with around eight concepts.

Q. Now what did you do with these eight concepts, what did you, personally, do with these eight plans? Did you deliver them to somebody? A. Well, the eight concepts had been disseminated to the Council, I believe, by Mr. Peyzant prior to my being there. However, when we made the modifications to correspond with precinct boundaries, some substantial revisions were sent, I believe, to the councilmen.

[413] Q. Did you feel compelled to adhere to precinct boundaries? A. Yes.

Q. And for what reason? A. Well, again, Mr. Salatich didn't think it would be a good idea. You have other political subdivisions in the city, especially State Representatives' districts, and State districts which in large part are based on precincts. So you might run into a situation say, where by changing a precinct boundary and that, for example, State Representative's district is defined by a specific precinct, you might have a situation where the boundaries change and some legal question about whether there would be two precincts, whether there would be one, etc., plus it would have caused a lot of difficulty for the Registrar of Voters.

Q. Did you feel any compulsion to adhere to existing ward boundaries? A. We had read the 1960, I believe, Councilmanic Reapportionment Case, Schlateau versus The City of New Orleans and some of the language in there had suggested that ward boundaries were to be recognized; the ward boundaries frequently correspond to major streets, Canal Street, Napoleon Avenue, and things like that. There were historical trends there. So, yes, we did follow ward boundaries whenever possible.

[414] Q. Is there any voter identification by ward in the City of New Orleans? Did the voters or citizens of New Orleans think of themselves as being within a certain ward? A. Well, it would vary . . .

Mr. Halpin: If I may, I would like to object to that question. I don't think the witness is competent to indicate what his opinion of the voters of the City of New Orleans felt.

Judge Robinson: You want to reframe your question, Mr. Treese?

Mr. Treese: Very well.

By Mr. Treese:

Q. In the political or election process in the City of New Orleans, what part do wards play? A. Insofar as the Registrar of Voters Office is concerned the wards are the constitutional unit by which their election processes are held and subdivided into precincts.

Q. Who establishes ward boundaries? A. They are established in the Constitutional Home Rule Charter of 1912 or—13.

Q. Is that the Constitution of the State of Louisiana? A. Yes, sir.

Q. All right. Now Mr. Eckert, after you had developed the eight or nine concepts and delivered them to Mr. Pezant who then in turn, turned them over to city councilmen, were you called in on any other development of the redistricting plan of [415] City of New Orleans? A. There was a luncheon meeting held wherein the Mayor of the City, Mayor Landrieu, had advocated an expansion of the Council. So subsequent to that luncheon meeting, Councilman Sapir asked that we draft an ordinance to call a Charter amendment election to expand the Council.

Q. Did you take part in the development of the plan for that ordinance? A. Well, it merely called—the ordinance, itself, merely called an election to expand the Council by two district Councilmen.

Q. Are you aware of the results of that ordinance? A. Well a number of things would happen. You mean the final outcome?

Q. Yes. A. Yes. Well, it's difficult to describe. Originally, the ordinance that had been drafted was to expand the Council to nine members; it was passed subsequent to —it was called in August, I believe, the Charter election. However, court injunction rendered the ordinance without effect and subsequently that ordinance was amended to hold the election in November. However, that was vetoed by the Mayor. So that was the final outcome of that ordinance, but one virtually identical to it was later introduced in December of '72.

Q. Very well. Now are you familiar with the two plans [416] that we have before the Court in this particular case. We have been referring to Plan 1 and Plan 2 for the redistricting of the City of New Orleans? A. Yes.

Q. Now did you play a part, or did you participate in the development of the so-called Plan 1? A. We did statistical work on it. I wouldn't say any precision had been put into that.

Mr. Treese: If the Court will indulge me for a minute, please.

Judge Robinson: Very well.

(Mr. Treese and Mr. Stoner conferred privately off the record.)

By Mr. Treese:

Q. Mr. Eckert, can you hear me (positioning himself near the maps displayed on the board in the courtroom)? A. Yes.

Q. Can you see these exhibits that are portrayed on this blackboard? A. Yes.

Q. The one on the left is Plaintiffs' Exhibit No. 11, can you identify that? A. Those are the Councilmanic districts that are presently constituted.

Q. And the one on the right, can you identify that [417] exhibit, that's designated Plaintiffs' Exhibit No. 12 (in-

dicating)? A. That was the ordinance adopted by the Council in, I believe, March of 1972 which was submitted to the Justice Department and later overruled by the Justice Department.

Q. That is what we call what we have referred to as Plan 1? A. Yes, I think you have referred to it as Plan 1.

Q. All right, now, did you participate in the development of that Plan? A. Districts D and E are similar to concepts we have prepared; however, again, we just did, I believe, statistical work on Districts A, B, and C.

Q. Would you describe further, when you say, "did statistical work", what do you mean? A. We performed calculations to determine whether or not they were proximating 118,694.

Q. Did you do any statistical work with regard to racial composition of the populations of the various districts? A. Well, we added total population and added up the black population.

Q. Did you have available the registration statistics, also, in addition to population statistics? A. Yes, we did.

Q. In the development of the concepts, or plans, were [418] these factors in your mind, the population and the registration statistics with regard to race? A. In the development of the plans?

Q. Yes. A. Again, primarily, we were concerned with total population. You couldn't help but look to the black population to see if other general guidelines were being met on it, specifically, anti-dilution and registration, also, was important because in the Attorney General's guidelines one has to be careful not to dilute minority voting strength.

Q. Did you observe any other considerations, such as natural boundaries, in the development of these concepts or plans? A. You are speaking of Plan 1?

Q. Yes. A. Well, as I said, we essentially performed, I believe, statistical work on what is called the Plan 1.

Judge Waddy: Mr. Halpin, are you understanding the witness sufficiently?

Mr. Halpin: Yes, sir.

Judge Waddy: Very well.

By Mr. Treese:

Q. All right, now after the so-called first plan passed the City Council and went to the Justice Department and was turned down by the Attorney General, was the staff—the [419] Research Staff of the City Council then directed to come up with some alternative plans for the redistricting of the City of New Orleans? A. Yes, in November of 1972, Councilman Moreau asked the staff to prepare redistricting plans.

Q. And did you? A. Yes, we did.

Q. And did you follow the same considerations that you have previously discussed here this morning with regard to the development of the first plan?

Mr. Shurtliff: Objection, the witness has stated that all he did in conjunction with the first plan was performed the statistical work.

Judge Robinson: The objection will be overruled. Would you clarify that? He may have done so even with reference to his statistical work.

By Mr. Treese:

Q. Did you take—in developing the second plan, did you take into consideration the same guidelines and approaches that you followed in developing the first plan? A. Well, I believe, in developing the second plan, we were more sensitive to anti-dilution factors. I believe we also attempted essentially to follow ward lines, natural boundaries, precinct boundaries.

Judge Robinson: Would you clear up, at least, for me at [420] this point, Mr. Treese, the question whether the witness in the operation in which he engaged, did anything with reference to the second plan that he did or did not do with reference to the first plan? In other words, was his activity entirely statistical with reference to the second plan as it was with reference to the first plan?

By Mr. Treese:

Q. Did you understand the Court's inquiry? A. Yes.

Judge Robinson: (Addressing witness) You did all this statistical work with reference to Plan 1?

Witness: Not alone, but yes, we did these statistical works.

Judge Robinson: Well, it was principally statistical work on Plan 1, as I understood your testimony?

Witness: Yes.

Judge Robinson: Was there any difference with reference to Plan 2?

Witness: Well, this was given to us by Councilman Moreau.

Judge Robinson: Yes, I understand that, and you were pursuing guidelines with reference to Plan 2 as you had previously with reference to Plan 1, but . . .

Witness: Which guidelines?

Judge Robinson: I beg your pardon?

Witness: Which guidelines did we continue under?

[421] Judge Robinson: No, no. I understand you to say that you were following guidelines of some sort with references to 2, as well as with reference to 1, is that correct—those given you by Councilman Moreau?

Witness: Yes, right.

Judge Robinson: Right, but what were you called on to do, was it principally statistical work, was it entirely statistical work, did it embrace other activities, or what?

Witness: Well, I believe, Councilman Moreau was asking for something in the vein of recommendation, for something that would be valid rather than simply finding out how many people were in his precinct.

Judge Robinson: What were you called upon to do in connection with Plan 1?

Witness: To design plans that would be feasible to meet the requirements of the law.

Judge Robinson: And that call would have involved activities of what general character?

Witness: What general character would that have involved?

Judge Robinson: Yes.

Witness: It would have involved examining guidelines, closely scrutinizing the area to see whether or not those guidelines were being met.

Judge Waddy: How does that differ from what you were doing with respect to the first plan?

[422] Witness: Well, in a staff capacity—you can write good laws, bad laws, constitutional laws, unconstitutional laws. If you are making staff recommendations, you make something that you think is good, legal, and constitutional. You understand what I mean by "in staff capacity?"

Judge Waddy: I still don't understand as to what different criteria, if any, you were using in the second instance from that which you used in the first instance.

Witness: In designing the first plan, we were—all right, we were merely performing some statistical data and provided that; whereas in the second plan, we were, more or less, designing something that we would offer as a staff recomemndation to Mr. Moreau.

Judge Waddy: All right, now tell us what criteria you used for the second plan?

Witness: All right, ward boundaries, we adhered to them whenever possible, natural boundaries, the River, major streets, canals, sensitivity to not diluting the strength of voting groups whenever possible, adhering to precinct boundaries, keeping the districts with a reasonable shape.

Judge Corcoran: All those factors have been considered in connection with Plan 1, haven't they?

Witness: Well, as I said, we had worked on, possibly, eight concepts. Now insofar as those concepts are concerned, I think those guidelines were utilized.

[423] Mr. Treese: May I raise another consideration?

Judge Robinson: May I ask a question before you do?

Mr. Treese: I'm sorry.

Judge Robinson: Mr. Eckert, I take it that when you got around to giving consideration to what is referred to as

Plan 2, you had all of your statistical raw material already on hand?

Witness: Yes.

Judge Robinson: Which was as a consequence of the work you did on Plan 1, am I correct in that regard?

Witness: Yes, the consequence of work done on Plan 1, and further work after that.

Judge Robinson: You have described your activity with reference to Plan 1 as largely, or principally, statistical. I gather from that, that your activities with reference to Plan 2 was different?

Witness: Well, I perceived it as being somewhat different, yes.

Judge Robinson: All right, now would you tell me the difference?

Witness: The difference?

Judge Robinson: Yes.

Witness: Okay. When the first plan was, as you see it on the display board, was worked out, it was worked out actually by District Councilmen. Now as Plan 2 was worked out, the District Councilmen didn't see it. So essentially, that is what I'm [424] saying.

Judge Robinson: If I understand you correctly, what you are saying is that Plan 2 was something that you made more of a contribution to than Plan 1?

Witness: Yes, I would say that.

Judge Robinson: I think I have it, Mr. Treese.

By Mr. Treese::

Q. As an example of that line of inquiry, Mr. Eckert, were you directed to treat the so-called Algiers section in a certain way in Plan 1 development by the Councilmen? A. Well, in the development of the eight concepts for the Councilmen, we were aware that Algiers needed a bridge and had its transportation problems and it was combined to form District A with Uptown New Orleans which is opposed to a bridge. Generally, I believe, both black and white who live in the uptown sections are opposed to a bridge in

their neighborhood. Needless to say, this produced some division for whoever would represent Uptown New Orleans and Algiers.

Q. Perhaps I can shorten this. Were you directed to split Algiers in the development of Plan 1? A. In the development of Plan 1?

Q. Yes. A. In the concepts involving Plan 1?

Q. Yes, yes. A. Well, when I came to work for the Council, some of the [425] concepts which had existed had split Algiers.

Q. How many proposals did you submit to Councilman Moreau in connection with the second plan? A. Four.

Q. Four? A. Yes, sir.

Q. Mr. Eckert, do you recognize the right hand map of the City of New Orleans (indicating), which is identified as Plaintiffs' Exhibit No. 3 on the board? A. Yes.

Q. Can you identify that for the Court? A. That is what is called Plan 2, I believe.

Q. That's the plan that is the subject of this law suit, right? A. Yes.

Q. All right, and so it was that plan and three others that the staff submitted to Councilman Moreau? A. Yes, sir.

Q. Now was the NAACP plan one of the four plans submitted to Councilman Moreau? A. Yes, sir.

Q. Did any of the four plans divide Algiers? A. No, sir.

Q. Were you directed not to divide Algiers? A. Well, I didn't think it was a good idea. No one said [426] not to, I think it was the general consensus by everyone that it would be a bad idea.

Q. Did you attend any of the public hearings, Mr. Eckert? A. Yes, sir.

Q. Surrounding the two plans? A. Yes, yes sir.

Q. Let's go to the first plan. How many hearings do you recall surrounding the first plan, public hearings? A. Well, there were two where there were individuals who came forth; there was a third, actually, because on final passage, citizens were permitted to speak with regard to the ordinance on final passage, but I really don't recall wheth-

er any one spoke or not on the ordinance on final passage.

Q. With regard to the second plan, do you recall attending a hearing? A. Yes, sir.

Q. And were people given the opportunity to speak at that? A. Yes, sir.

Q. All right, do you recall any one being denied the right to speak at those hearings? A. No, sir.

Q. Now did the staff on which you participated receive any plans from any special interest groups, or let's say any groups outside of the employment of the City of New Orleans for consideration? [427] A. Well, plans were presented to the City Council, that's the normal procedure; if they are presented to the City Council, we naturally get them.

Q. Were some received by the staff from the City Council? A. Well, we made it our business to get them, yes.

Q. How many were received? A. A plan over the entire span of redistricting?

Q. Right. A. Well, early in the game, the NAACP submitted a plan. You are referring to five districts?

Q. Yes, I am talking only now of five councilmanic districts. A. And then in April '72, the local Republican party submitted a plan. Those are the only plans that I am familiar with.

Q. Did you analyze those two plans from a statistical standpoint? A. Yes, sir, we went over them.

Q. And did you find that they were statistically balanced in conformity with the law? A. Yes, sir.

Q All right. Did you find that they met the guidelines with regard to compactness? A. I believe (pausing in thought)—yes, with regard to the NAACP plan, with regard to the Republican plan, I had some [428] questions about it in my own mind.

Q. In the development of all of the plans that you worked on since you have been employed by the staff, have you ever developed a plan which has east-west configurations for councilmanic districts as opposed to north-south configurations? A. Yes.

Q. And how many such plans have you developed? A. I would say two that could be called plans and that we were satisfied with them.

Q. Is it possible to develop such a plan and still in some way adhere to the traditional boundaries of the districts in the City of New Orleans in an east-west plan? A. Well, obviously, if you are going east and west, you can cut through some of the ward lines, so in doing so, you can cut through some of the councilmanic districts since '54, going north-south.

Q. In the development of your plan, were you ever ordered not to place two or more incumbent councilmen in any single district? A. No, sir.

Mr. Treese: Very well, would the Court indulge me for a moment?

Judge Robinson: Very well.

(Mr. Treese conferred privately off the record with Mr. Stoner.)

[429] Mr. Treese: May it please the Court, the balance of this witness' testimony can be found in the deposition.

Judge Robinson: Very well, Mr. Treese.

Mr. Shurtliff.

Cross Examination

By Mr. Shurtliff:

Q. Mr. Eckert, in drawing the second plan, did you consider as a factor whether or not to place two or more incumbent councilmen in the same district? A. Yes.

Q. How was that a factor and in what degree was that a factor? A. Well, the question went to whether or not the City Council would pass a plan; essentially, that is, I believe, the reason.

Q. And you considered that question, sir? A. Well, we provided alternatives, I believe.

Q. Alternatives that did not place two or more incumbent councilmen in the same district? A. Yes.

Q. And does Plan 2 place two or more incumbent councilmen in the same district? A. No, sir.

Q. You stated you submitted to Councilman Moreau in response to his request four plans? [430] A. Yes.

Q. Did any of the other three plans submitted to Councilman Moreau place two or more incumbent councilmen in the same district? A. Yes, sir.

Q. How many of those plans did that, do you recall, sir? A. Out of four, two placed councilmen in the same district.

Q. Did you recommend one of the four plans to Councilman Moreau more strongly than you did the others, or how did you handle your response to Councilman Moreau's request for the redrafting of the plants? A. We gave him the four maps and the data, and essentially, that was it.

Q. Did you give him statistical data, as well as the maps? A. Yes.

Q. What kind of statistical data did you give him? A. Population totals and black.

Q. Did you give registration statistics? A. No, sir.

Q. You testified that you at one point did develop some registration statistics. When did you first start developing registration statistics in your work on the whole in the redistricting problem? [431] A. Well, prior to the adoption of what is called Plan 1, we were starting to develop some voter registration figures.

Q. Why did you do that, sir? A. Well, for one thing, it was required in the Voters Rights Act; in order words, this was a consideration.

Q. Were there any other reasons you developed those statistics? A. Well, I believe, Mr. Pezant asked me to, you know, run through some of those.

Q. Did he ask you to run through registration statistics for all of the concepts you had developed? A. I don't believe he ever asked us to do that—for all the concepts that have been developed?

Q. Yes, sir. A. No, I can't recall him ever saying that I do it for every concept.

Q. What did he ask you to do? A. In certain cases, you know, we would just see what various options did in the way of voter registration.

Q. In what cases? A. Well, there wasn't anything really arbitrary in nature to it, I would say, essentially, for District E, we were working with two options, to see what one option did and what the other option did.

Q. Did any councilman ever ask you to prepare registration [432] statistics for him? A. Yes, Councilman Lambert did.

Q. And when did he do that? A. At a luncheon meeting where the Mayor advocated an expansion of the Council.

Q. And this was prior to the adoption of the first plan? A. Yes.

Q. What did Councilman Lambert ask you to do? A. He just wanted the makeup on his district under the various options.

Q. What do you mean by "makeup?" A. The racial composition, population.

Q. Registration? A. Yes, I think we gave him registration.

Q. Did he indicate why he wanted that information? A. Well, he said that he needed it to make an intelligent decision.

Q. You stated that you performed statistical work in the development of Plan 1? A. Yes.

Q. And that the plan was, in fact, developed by the District Councilmen, is that correct? A. Yes, essentially, Districts A, B, & C were worked out by Councilmen from A, B, & C.

Q. How do you know that that was the case? [433] A. Mr. Gregory Smith of the staff and I were in the room and were working the calculator.

Q. And what room was that, sir? A. Well, the calculator was in the front room of our office which is divided into two rooms and the Councilmen were in the back room.

Q. And when did this take place? A. I believe it was a week—a week and a day prior to the adoption of Plan 1.

Q. Who attended that meeting from the City Council? A. The five District Councilmen.

Q. How long did the meeting last? A. Two or three hours.

Q. And was the result of that meeting Plan 1? A. Yes, sir.

Q. How did—would you describe the meeting for us as to how they went about developing a plan? A. Well, it took from the starting point with the districts that they had and determined who would have to gain population, who would have to lose population, and from that point, decided where to take that population from and transfer it to.

Q. And what function did you, sir, you and Mr. Smith, have? A. We indicated whether or not the population in the areas under consideration would be sufficient.

[434] Q. Did you indicate registration figures? A. Yes, I believe we worked out some registration figures.

Q. As well as population figures? A. Yes, sir. (Pausing in thought)—Let's see, I'm trying to think. We did work out some registration figures. I know we didn't do all of the registration figures.

Q. Did the Councilmen have before them maps of the City? A. Yes, sir.

Q. What maps did they have, if you recall? A. There was a city map, a voters aspersion map.

Q. A registration map by race? A. Yes, sir.

Q. This map has previously been marked for identification . . .

Judge Robinson: Just a moment, (addressing witness) can you see the map?

Witness: Yes, sir.

By Mr. Shurtliff:

Q. . . . as Defendant's Exhibit 1. Is this the map (indicating) that they had before them at that time, sir? A. Yes, sir, I believe that is the map.

Q. What use did they make of that map, do you know, sir? A. They referred to it during the discussion.

Q. Did councilmen from districts that shared a common [435] boundary, did they in particular discuss where that boundary should go, or did all councilmen consider that? A. Generally, that type of discussion would have been between the adjacent councilmen.

Q. You stated that in regard to the second plan, that you paid more attention to anti-dilution factors? A. Yes, I believe so.

Q. What do you mean by that, sir? A. Essentially, where there is a large grouping of voters, minority groups, I was of the opinion that one should not go out of one's way to dilute their voting strength. Translated, what that means is that the large black voter concentration in District B area, District B had to gain population, so essentially, you had three ways to go about it. You could go to Algiers, but that wouldn't have been feasible because Algiers had the bridge down there and if you went over into the fourteenth ward to increase population, you would be adding, essentially, white voters which had the effect of diluting the District B voting strength; or third, you could go to the second ward which would have slightly increased the black voting strength in District B. So given that option, we decided that the NAACP district was quite compact; it went into—it did not dilute black votes in District B, and thirdly, it didn't overdo it; in other words, it didn't concentrate a district with 90 per cent black which, of course, had the effect of lessening black voter [436] strength in other districts.

Q. Well, did you set out to insure that there would be no 90 per cent black district? A. Well, I believe it's the Louisiana Legislature that originally designed Dorothy Mae Taylor's district, which would have been 99 per cent black and the court specifically said that that was just an attempt to dilute black voting, taking as many blacks as possible into one district, which, certainly, we were of the opinion that it created a district 90 per cent black.

Q. It was your judgment that 90 per cent black district would be diluted in the sense that it would concentrate too many blacks and adversely affect their strength in other districts? A. Precisely.

Q. How about 80 per cent? A. Well, we really didn't have to worry about that question of what the percentage is, the NAACP had suggested this and we took them as being spokesmen for the black community and we decided that if, you know, 53, or 54 per cent is sufficient and minimized that.

Q. Sufficient for what? A. For creating a district that did not dilute black voting strength.

Q. You stated that at one point you did develop some plans that ran generally east or west as opposed to north-south? A. Yes, sir.

[437] Q. And did they meet the standards of the population equality? A. Yes, sir.

Q. Did they meet or not meet other standards or considerations that you considered important, and if so, would you tell us the factors that you felt they met or did not meet? A. The plans that we drew up?

Q. That went east to west? A. That went east to west? Well, of course they didn't adhere to ward boundaries. When you are drawing east-west plans to you to be very careful, again, you come into Algiers and—in other words, you don't want—in my opinion, you don't want Algiers uptown. So if you are going to go east-west, you can run into a situation where you have some polarization between Algiers and another part of the city.

Q. So you want Algiers to be with some other portion of the city with whom its people are compatible, is that what you are stating? A. Well, when I say it should fit in, for example, if you drew some sort of east-west plan ended up placing, say, Algiers together with, say, the lower seventh ward area, you would have two areas of the city which in composition were virtually opposite.

Q. Opposite in what respect, sir? A. Well, in that they had no historical connection; they [438] had no socio-economic connection, no geographic connection.

Q. How did yo uknow that you should consider these factors in dealing with the placement of Algiers in a redistricting plan that you were drafting? A. Well, I think, insofar as the aforementioned things, such as ward boundaries, historical boundaries, and natural boundaries, that Mr. Salatich had provided, the rest, I think, is, more or less, an assumption.

Q. Were you ever told by Council Moreau, or any other city councilman not to split Algiers? A. I think—I recall hearing Councilman Moreau saying it was bad to split Algiers, it's bad (repeating) it's bad to split Algiers, so in the second group of plans, we totally avoided that.

Q. In the first plan, Algiers was split into three portions, is that not correct, sir? A. Yes, sir.

Q. In the second plan there, they share a councilman with just one other section of the city, is that correct? A. Yes, sir, Algiers is incorporated in districts.

Q. Which district is it in? A. District C.

Q. And am I correct in understanding that in the second plan, District C runs from the lake to the Blackman Parish Line? A. Yes, sir.

[439] Q. Do you have any idea of how far that would be in miles? A. No, sir, I don't.

Q. Do those persons share common socio-economic backgrounds? A. I think taken as a whole many parts of it is similar (repeating) many parts are similar.

Q. In your judgment, District C in the second plan meets the guidelines that you were required to follow, such as compactness, population equality, and so forth? A. Yes, I think it is a reasonable district.

Mr. Shurtliff: I have no further questions, Your Honor.

Judge Robinson: Very well. Mr. Halpin.